

**SECOND ADDENDUM TO AMENDED  
DEVELOPER'S AGREEMENT  
BETWEEN  
INDIAN RIVER COUNTY, FLORIDA AND  
DIVOSTA HOMES, L.P.  
FOR WATERWAY VILLAGE**

THIS SECOND ADDENDUM is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between Indian River County, Florida, a political subdivision of the State of Florida, 1801 27th Street, Vero Beach, FL 32960, ("County"), and DiVosta Homes, L.P., a Delaware Limited Partnership, 4400 PGA Blvd., Suite 400, Palm Beach Gardens, FL 33418 ("Developer").

**WITNESSETH**

WHEREAS, Developer is in the process of developing a Development of Regional Impact ("DRI") known as Waterway Village in Indian River County, Florida; and

WHEREAS, the County, pursuant to Chapter 380, Florida Statutes, approved Waterway Village as a DRI by adopting Resolution 2004-137 ("Development Order"), as amended by Resolutions 2010-037; 2012-029; and 2013-073.

WHEREAS, County and Developer entered into that "Amended Developer's Agreement between Indian River County, Florida and DiVosta Homes, L.P. for Waterway Village" dated May 11, 2010 ("Developer's Agreement") and amended by that First Addendum thereto ("First Addendum") dated December 8, 2015; and

WHEREAS, as a result of that First Addendum and further as a result of action by the Florida Legislature, specifically House Bill 7207, amending Section 380.06(19) (c), Florida Statutes, certain obligations of the Developer under the Developer's Agreement were extended by four (4) years; and

WHEREAS, County and Developer have determined that they are able to assist each other with respect to certain roadway improvements and intersection improvements described in the Development Order and in the Developer's Agreement; and

WHEREAS, as a result of such mutual accommodation, County and Developer agree that amendments to the Development Order and to the Developer's Agreement are required.

NOW, THEREFORE, for in consideration of the mutual terms, conditions, promises covenants and premises hereinafter stated, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, the County and the Developer hereby agree as follows:

1. The foregoing recitals are incorporated as if fully restated herein.

2. A. Developer agrees to design, permit, and construct 58th Avenue as a four-lane roadway between Station 155+00 and Station 182+00 ("County's Segment") as depicted on the Waterway Village 58th Avenue Roadway Improvements 49th Street to 57th Street, prepared by Kimley-Horn, project number 147282003 ("Kimley-Horn Plans"), to include improving the intersection at 57th Street and 58th Avenue to an ultimate four-lane divided configuration with left turn lanes on all approaches. County acknowledges that neither design, permitting, nor construction of this roadway section is an obligation of the Developer pursuant to the Development Order, and that neither the commencement nor the completion of these improvements shall affect issuance of building permits, certificates of occupancy, or any other approval process concerning Waterway Village.

B. The County shall be responsible to coordinate the relocation of any utilities which conflict with the proposed construction within the County's Segment. As used herein "utilities" shall include but not be limited to, water, sewer, force mains, electric service, cable, gas, and all other public service, whether owned by Indian River County or privately owned. County agrees to assist Developer to coordinate relocation of any public or private utilities.

C. The County shall be responsible for acquiring any additional right-of-way necessary or appropriate to complete the construction.

D. 1. The County shall reimburse the Developer for all Design and Construction Costs associated with the project for the County's Segment including improving the intersection at 57<sup>th</sup> Street and 58<sup>th</sup> Avenue to an ultimate four-lane divided configuration with left turn lanes on all approaches. The cost of design is estimated at Two Hundred Thirty Three Thousand Seven Hundred Five 00/100 Dollars (\$231,311.00), as provided from Kimley-Horn and Associates in the attached Exhibit A dated August 24, 2018.

2. The Developer shall invoice the County for all costs to be reimbursed by the County as draws throughout the design, permitting, and construction of this roadway segment. Any invoice submitted by the Developer to the County for County's payment shall be reimbursed by the County according to the Prompt Payment Act (Section 218.70-218.80, Florida Statutes, 2017), and not with impact fee credits. County hereby designates its Public Works Director to receive invoices from the Developer. The Public Works Director shall have twenty-one (21) days to review and approve reimbursable costs or to request revisions or additional information.

3. Section 4.B. of the Developer's Agreement is hereby amended and restated as follows:

The Developer shall contribute to the County the following sums of money toward the intersection improvements specified below (“Contribution Amount”). The Developer shall not receive compensation or impact fee credits for these Contribution Amounts.

<u>Intersection Improvements</u>	<u>Developer Contribution</u>
S.R. 60 and 43 <sup>rd</sup> Avenue	\$153,300.00
S.R. 60 and 58 <sup>th</sup> Avenue	\$110,400.00

(Exhibit “C” is hereby deleted)

4. Section 4.C. of the Developer’s Agreement is hereby deleted, the parties having agreed the Developer has complied with this section to the degree feasible.

5. Section 6 of the Developer’s Agreement is hereby amended and restated as follows:

The Developer shall construct the improvements between Station 102+75 and 155+00 (“Developer’s Segment”) as depicted on the Waterway Village 58<sup>th</sup> Avenue Roadway Improvements 49<sup>th</sup> Street to 57<sup>th</sup> Street, prepared by Kimley-Horn, project number 147282003 (“Kimley-Horn Plans”) to include improving the intersections at 49<sup>th</sup> Street & 58<sup>th</sup> Avenue and at 53<sup>rd</sup> Street & 58<sup>th</sup> Avenue, both to an ultimate four-lane divided configuration with left turn lanes on all approaches, at Developer’s own expense; however, Developer shall receive traffic impact fee credits as described in Section 7.A. of the Developer’s Agreement. Said construction shall commence no later than December 1, 2019 (“Commencement Date”), and shall be completed within twelve (12) months of commencement, provided that said construction may not be completed within twelve (12) months to the extent that it ties to the Developer’s obligations pursuant to Section 2 of this Second Addendum. If additional right-of-way is required to construct the improvements described in this paragraph and the County has not acquired such right-of-way before the Commencement Date, then the Commencement Date shall be extended until such time as the required right-of-way is acquired by the County. To the extent that Developer does not need impact fee credits, based upon the number of residences or of commercial space contemplated for Waterway Village, or to the extent that impact fee credits are insufficient to fully compensate Developer for reimbursable expenses associated with construction of this Developer’s Segment, including intersection improvements, the County shall reimburse the Developer in accordance with the local Government Prompt Payment Act, and according to the procedures

described in Section 2 of this Second Addendum, above. Developer's obligations for construction of this roadway segment include signalization of the intersection at 49<sup>th</sup> Street and 58<sup>th</sup> Avenue. The Developer shall be responsible to coordinate the location of any utilities as needed within the Developer's Segment. County shall assist Developer to coordinate relocation of any public or private utilities.

6. The Developer will be responsible for submitting a Right-of-Way permit application to the Public Works Department for the entire project. The Developer shall comply with all Indian River County Code of Ordinances and Land Development Regulations pertaining to the permitting process including all bonding requirements.
7. The Developer shall provide all fill for the projects described herein, estimated at forty thousand (40,000) cubic yards, at cost.
8. Except as amended or restated by this Addendum, the Developer's Agreement remains in full force and effect.
9. Upon approval and execution by Developer and County, this Addendum shall be attached as an exhibit to the Amended and Restated Development Order, in accordance with the terms of the Amended and Restated Development Order.
10. This Agreement may be executed in any number of duplicate originals and any such duplicate original shall be deemed to constitute one and the same instrument.

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Clean 9.13.18

DIVOSTA HOMES, L.P.,  
a Delaware limited partnership  
By: DiVosta Home3s Holdings, LLC  
a Delaware limited liability company,  
it's General Partner

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_  
(Corporate seal is acceptable in place  
of witnesses)

BOARD OF COUNTY COMMISSIONERS  
INDIAN RIVER COUNTY, FLORIDA

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

BCC Approved: \_\_\_\_\_

Attest: \_\_\_\_\_  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
(Approved as to Form and Legal Sufficiency)

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2018, by \_\_\_\_\_, as \_\_\_\_\_ of DiVosta  
Homes Holdings, LLC, a Florida limited liability company, in its capacity as the general partner  
of DiVosta Homes, L.P., a Delaware limited partnership. Who is personally known to me or has  
produced \_\_\_\_\_ as identification.

(Notary Seal)

Notary Public  
My Commission Expires: \_\_\_\_\_