

AGREEMENT BETWEEN
INDIAN RIVER COUNTY, FLORIDA
AND
THE MOORINGS CLUB, INC.
FOR
HAWKS NEST

FOR THE CONSTRUCTION OF OFF-SITE UTILITIES

THIS AGREEMENT by and between **INDIAN RIVER COUNTY**, a political subdivision of the State of Florida, the address of which is 1801 27th Street, Vero Beach, Florida 32960 (hereinafter the "COUNTY") and The Moorings Club, Inc. a Florida Not for Profit Corporation, the address of which is 100 Harbour Drive, Vero Beach, FL 32963 (hereinafter the DEVELOPER) is effective upon execution by the two parties.

WHEREAS, the DEVELOPER, is constructing water facilities for the Hawks Nest Golf Course located at 6005 Old Dixie Highway, Vero Beach, FL, 32967, and more specifically described in Exhibit "A"; and

WHEREAS, the COUNTY, pursuant to Section 201.11, of the Code, agrees to reimburse the DEVELOPER, as provided herein, for the cost of oversizing off-site utilities,

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein and other good and valuable consideration, the COUNTY and DEVELOPER agree as follows:

1. OFF-SITE UTILITIES:

The DEVELOPER shall construct the necessary off-site utilities described herein as directed by the Indian River County Utilities Department. The COUNTY shall reimburse the DEVELOPER for installing off-site utilities as outlined below:

- A. 12-inch Diameter Water Main along Old Dixie Highway approximately 487 linear feet from approximately 5920 Old Dixie Highway to 6001 Old Dixie Highway.

Reimbursement: The COUNTY shall reimburse the DEVELOPER pursuant to the provisions of Section 201.11, of the Code, for funds advanced by DEVELOPER to oversize the off-site facilities. COUNTY shall reimburse DEVELOPER in accordance with Exhibit "B" for oversizing the off-site watermain. The actual reimbursement amounts shall be based on Exhibit B but in no event shall the County cost share exceed \$17,502.67. The reimbursements shall

follow the schedule outlined below:

1. Off-site watermain identified as Item IRC-1 in Exhibit B to be paid once completion of all necessary testing, acceptance of Florida Department of Environmental Protection (FDEP) Certification Of Completion, final close out of the FEC permit for work within the FEC right of way, and acceptance of the watermain dedication to Indian River County Department of Utility Services (IRCDUS) through a Bill of Sale, per (IRCDUS) Water & Wastewater Utility Standards, May 2019 or latest edition, granting of all items set forth in section 9 below, and payment to the COUNTY of \$5,435.56 for the fees paid by COUNTY to FEC.

2. Amendment:

This Agreement may be modified only by a written instrument executed by all parties to the Agreement.

3. Assignability:

Either party may assign this Agreement. However, the rights granted herein shall run with the land and are not the personal property of the DEVELOPER. Therefore, while the DEVELOPER has the right under this Agreement to freely transfer the rights and obligations granted by this Agreement, the assignee shall not have the right to transfer these rights to another property unless this Agreement is amended in writing by the assignee and the COUNTY.

4. Authority:

Each party hereto represents and warrants to the other that the execution of this Agreement and any other documents required or necessary to be executed pursuant to the provisions hereof are valid, binding obligations and are enforceable in accordance with their terms.

5. Captions:

Captions, if included, in this Agreement are included for convenience only and are not to be considered in any construction or interpretation of this Agreement or any of its provisions.

6. Construction Plans, Technical Specifications and Contract Documents:

The DEVELOPER agrees to complete a final set of construction drawings and make submission for a Utilities Construction Permit (UCP) to the Indian River County Utilities Department, Florida Department of Environmental Protection (FDEP) and all other necessary permits. The DEVELOPER shall not commence construction until all permits are approved and obtained.

7. Definition

All pronouns shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the identity of the party or parties may require.

8. DEVELOPER'S Obligations:

The design, preparation of contract documents, permitting, and construction of all water and wastewater utilities which is on or solely serving Hawks Nest Golf Course (including but not limited to water meter, transmission lines, pumps, valves, storage facilities, etc.) shall be the DEVELOPER's responsibility and expense until such time the completion of necessary testing, acceptance of Florida Department of Environmental Protection (FDEP) Certification Of Completion, final close out of the FEC permit for work within the FEC right of way, and acceptance of the watermain dedication to Indian River County Department of Utility Services (IRCDUS) through a Bill of Sale, per (IRCDUS) Water & Wastewater Utility Standards, May 2019 or latest edition has been completed. Construction of on-site water and wastewater utilities shall be subject to COUNTY review and approval.

The DEVELOPER shall be deemed in possession of the potable water on the DEVELOPER's side of the water meter, however the DEVELOPER shall not be deemed to own the water, and the transfer or sale of water by the DEVELOPER is prohibited.

The DEVELOPER may not transfer or sell water or wastewater capacity to any party for use off-site of the property.

9. Easements:

The DEVELOPER shall convey to the COUNTY a utility easement for the water utilities for the COUNTY to install, maintain, operate and monitor the water utilities, within the private right-of-way including, but not limited to, water lines, services, laterals, manholes, meters, lift station, sewer, remote monitoring and related utility structures.

After the COUNTY'S final inspection of the water facilities for conformance with the approved plans and specifications, the DEVELOPER shall convey all water facilities together with an interest in land, as may be required by the COUNTY, to the COUNTY. The conveyance shall include any of the following documents as may be required by the COUNTY, in a form acceptable to the COUNTY:

- a) Bill of Sale
- b) Grants of Easements
- c) Maintenance Bond
- d) Record Drawings (hard copy, signed and sealed by a professional surveyor registered in the state of Florida, and electronic format – AutoCAD rel. 15.0 or higher)

10. Entire Agreement

This Agreement embodies the entire agreement between the parties relative to the subject matter hereof, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter hereof, which are not expressly set forth herein.

11. Governing Law & Jurisdiction:

This Agreement shall be governed by the laws of the State of Florida and the laws of the United States pertaining to transactions in such state, and all actions arising out of this Agreement shall be brought in Indian River County, Florida, or, in the event of federal jurisdiction, the United States District Court for the Southern District of Florida. All of the parties to this Agreement have participated freely in the negotiation and preparation hereof. Accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.

12. Indemnification:

The DEVELOPER hereby releases and holds harmless the COUNTY, and the COUNTY'S officers, employees and agents, from and against any and all claims for damages, costs, third party claims, judgments, and expense to persons or property that may arise out of, or be occasioned by, any work contemplated by this agreement, or from any act or omission of any representative, agent, client, and/or employee of DEVELOPER, and DEVELOPER shall indemnify the COUNTY against any such claims and any judgments that may be entered in connection therewith, including attorney fees. DEVELOPER shall indemnify the COUNTY against any claim for damage that any utility, whether publicly or privately owned, may sustain or receive in connection with any work contemplated by this agreement. DEVELOPER shall not make any claim of any kind or character whatsoever against the COUNTY for damages that it may suffer by reason of the installation, construction, reconstruction, operation, and/or maintenance of any public improvement, or utility, whether presently in place or which may in the future be constructed or installed, including but not limited to, any water and/or sanitary sewer mains and/or storm sewer facilities, and whether such damage is due to flooding, infiltration, backflow, and/or seepage caused from the failure of any installation, natural causes, or from any other cause of whatsoever kind or nature. It is the intention of this indemnification agreement on the part of DEVELOPER, and a condition of this agreement, that it shall be full and total indemnity against any kind or character of claim whatsoever that may be asserted against the COUNTY. DEVELOPER hereby agrees to defend any and all suits, claims, and causes of action brought against the COUNTY arising out of or in connection with any work contemplated by this agreement, and DEVELOPER agrees to pay any judgment or judgments, including attorney fees, that may be rendered against the COUNTY or against the COUNTY'S officers, employees or agents in connection therewith.

13. Maintenance Security:

The DEVELOPER agrees to convey all right, title and interest in the aforementioned utility improvements to Indian River County, Florida, and provide security as set forth herein, subject to the COUNTY'S approval, for a period of one (1) year after the COUNTY'S acceptance of the improvements, plus an additional three (3) months, for an aggregate of fifteen (15) months. The maintenance security may only be in one of the following forms: (a) cash, whereupon the COUNTY and the Developer shall enter into the COUNTY'S standard Cash Escrow Deposit Agreement; or (b) Letter of Credit, in the County's standard form, drawn and payable by a financial institution located within Florida. The value of the maintenance security shall be twenty-five percent (25%) of the total construction value of the utility improvements as certified by the Developer's licensed engineer and approved in writing by the County.

14. Multiple Counterparts:

This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) Agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party to be charged.

15. Permits:

The DEVELOPER shall be responsible for obtaining all construction and operating permits required for the construction, delivery, use and monitoring of the water distributed to and wastewater collected from the DEVELOPER property (Lost Tree Preserve Plan Development). If, through no fault of the parties involved, any federal, state or local government or agency (excluding the COUNTY) fails to issue necessary permits, or fails to grant necessary approvals, or requires a material change in the system, then to the extent necessary and if possible, the parties agree to negotiate an amendment to the Agreement to reflect the change in condition. If the COUNTY determines that it is impossible or impracticable to perform under the terms of this Agreement because of the above, then this Agreement shall terminate and the parties shall have no further obligations to each other.

The DEVELOPER shall comply with reasonable request by the COUNTY concerning on-site operations and maintenance prior to County acceptance including but not limited to all FDEP regulations relating to bacteriological and hydrostatic testing, cross connection control, monitoring, color-coding of water and wastewater equipment.

16. Recording of Agreement:

This Agreement may be recorded in the official records of Indian River County by the COUNTY. If recorded, the obligations defined in this Agreement shall run with the land and shall bind subsequent owners of the property for the term of this Agreement. The DEVELOPER shall pay for all recording costs.

17. Severability / Invalid Provision:

If any provision of the Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

18. Term:

The term of this Agreement is five (5) years. Unless otherwise agreed to by the parties in writing, this Agreement shall not be renewed automatically for successive terms. Notwithstanding the foregoing, this Agreement shall be coterminous with FDEP Permit for construction and with the County's Utility Construction Permit, whichever provides a shorter time period, but shall be not more than five (5) years from the date of issuance. The County

may terminate this Agreement early in its sole discretion if it determines that the development project intended to be served by the improvements is suspended or discontinued.

19. Time of Essence:

Time is of the essence of this Agreement; however, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the State of Florida, then, in such event, the time of such period shall be extended to the next business day which is not a Saturday, Sunday or legal holiday.

IN WITNESS WHEREOF, the COUNTY and the DEVELOPER have accepted, made, and executed this Agreement as follows:

Christin Cole

Witness Signature

Christin Cole

Witness Printed Name

Susan Wengert

Witness Signature

Susan Wengert

Witness Printed Name

DEVELOPER: The Moorings Club, Inc.

By: Craig J. Lopes

Printed name: Craig J. Lopes

Title: G.M. : CEO

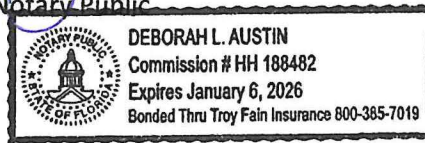
Date: 2/6/23

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

NEED UPDATED SIGNATURE BLOCK

Name: Deborah L Austin
Commission # HH 188482
Expiration Date 1/6/2026

Deborah L Austin
Notary Public



Attest: _____
Jeffery R. Smith, Clerk of the Circuit Court

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Joseph H. Earman, Chairman

BCC Approved: _____

Approved as to Form and Legal Sufficiency

Approved by:

County Attorney

Michael Zito, Interim County Administrator

EXHIBIT-A
LEGAL DESCRIPTION