

**RESTATED AND AMENDED DEVELOPER'S AGREEMENT BETWEEN
INDIAN RIVER COUNTY
AND
PROVIDENCE POINTE VERO BEACH LLC
FOR OFF-SITE TRAFFIC IMPROVEMENTS AND RIGHT-OF-WAY
DEDICATION**

THIS RESTATED AND AMENDED DEVELOPER'S AGREEMENT ("Agreement") dated November 18, 2014 by Indian River County ("County") and Providence Pointe Vero Beach LLC ("Developer") is made this _____ day of _____, 2024.

Recitals:

- A. Developer is in the process of developing a Planned Development–Traditional Neighborhood Design ("PDTND") known as Providence Pointe.
- B. In 2014, County and Developer entered into the Agreement to memorialize each party's respective goals and obligations regarding certain traffic improvements and right-of-way dedications described in the Agreement and related to or in proximity with Providence Pointe.
- C. Between 2014 and 2023, certain developments have occurred which make it mutually advantageous to County and Developer to accept and enter into this restated and amended agreement.

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

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:

1. Recitals: The foregoing recitals are incorporated as if fully restated herein.
2. Intersection Improvements: Developer shall contribute the following sums of money or construction or both toward the Intersection Improvements specified below. County acknowledges that the contributions or construction or both described herein satisfy the Developer's entire obligation with respect to off-site intersection improvements through build-out of Providence Pointe, except to the extent that additional property or residential units or commercial development may be added to Providence Pointe in the future. The County shall not withhold any approval or permit, nor shall it deny any concurrency certificate, 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.

- A. Prior to the request for Certificate of Completion for Phase II of the conceptual plan, the Developer's Engineer shall submit a conceptual design plan for the proposed north bound right turn lane at 41st St. and 58th Avenue so that the county may agree to a layout and commence to address any right-of-way needs. Prior to the issuance of a Certificate of Completion for Phase III of the conceptual plan, Developer shall either construct a northbound right turn lane or escrow the estimated cost for the design and permitting of said northbound right turn lane with the county." At its own cost and expense, County shall obtain the right-of-way needed to construct the North-bound right turn lane once the Developer brings forth their conceptual plan for the North-bound right turn lane.
- B. Prior to the issuance of a Certificate of Completion for Phase IV, Developer shall pay 13.9% of the ultimate intersection actual contract costs. If a contract has not been executed, the amount to be placed in escrow shall be based on a Professional Engineer's cost estimate using the latest 45th Street Improvements design, which County shall provide to Developer at Developer's request prior to commencement of Phase IV."
- C. Prior to the issuance of a Certificate of Completion for Phase I, the Developer pay 14.7% of the cost in the amount of \$410,683.89 for the ultimate intersection improvements at 49th St. and 58th Ave., including left turn lanes from all approaches, based upon actual contract costs as previously completed."
- D. Developer and County agree that the County has completed the intersection improvements and has constructed 53rd St., west from 58th Ave. for a distance of 300 feet at the County's own cost and expense, and County shall not seek reimbursement for such costs or expenses. Prior to issuance of a Certificate of Completion for Phase II, Developer shall, at its own cost and expense, either construct the continuation of 53rd St., westerly for a distance of 600 feet as a four-lane road to the Project's westernmost connection to 53rd St., or, if in conjunction with another developer participate in the development of said road segment as a four-lane road, with a transition to a two-lane road at the end of the 600 foot project. Developer shall not seek reimbursement from the County for the cost of design permitting and construction of the two-lane portion of said road. Commencing from the 53rd St. required improvements, Prior to the issuance of a Certificate of Completion for Phase III, Developer shall escrow Developer's fair share (37.5% of funds) to construct 53rd St. as a two-lane road from the point where the paved improvement described herein ends to the point which is 2,454 feet west of the Project's east property line as based upon a conceptual rendering provided by the Developer's Engineer and agreed upon by the

County. Developer shall not be responsible for final design or construction of the westerly pavement extension improvements.”

- (1) The County shall have the right to approve the scope of work for the design and engineering phase of the project. The County shall not unreasonably withhold or delay such approval. Failure to reply to the Developer within thirty (30) days after the submittal of design and engineering plans shall constitute approval.
- (2) The Developer’s obligation with respect to 53rd Street, as identified in this Developer’s Agreement, shall be deemed satisfied so long as the Developer is in compliance with this Agreement, and the County shall not withhold any approval, permit, or concurrency certificate because of the condition of 53rd Street anywhere except adjacent to Providence Pointe, provided the Developer is in compliance with this Agreement.
- (3) The Developer shall receive traffic impact fee credits for all design, engineering, permitting, and construction costs associated with the 53rd Street improvements described herein paid or contributed by the Developer, except for: those costs associated with site related turn lanes or other site related improvements; and any landscaping in excess of the landscaping required by County Ordinance. These shall be considered “non-reimbursable costs”.

3. 49th Street Improvements and Dedication:

A. Prior to the issuance of a Land Development Permit for Phase 4 of Providence Pointe, the Developer shall:

- (i) Dedicate to the County ten feet (10') of right-of-way along the project's 49th Street frontage from 58th Avenue West for a distance of approximately 2,591 feet (the "Eastern Segment") see Exhibit "B"; and
- (ii) Dedicate to the County along the project's 49th Street frontage sixty feet (60') of right-of-way from the West end of the "Eastern Segment" to a point approximately 1,328 feet West (the "Western Segment") see Exhibit "B".

B. Prior to the issuance of a Certificate of Completion for Phase IB, Developer shall construct a two-lane road for a distance of approximately 3,260 feet from the existing paved road on 49th Street, which ends approximately 700 feet west of 58th Ave., to the western boundary of Providence Pointe, as shown on the Conceptual Plan. The construction may be completed in sections which follow the progression of development of the Project.

4. 58th Avenue Dedication: Prior to the issuance of a Land Development Permit for Phase 4 for Providence Pointe, the Developer shall dedicate by right-of-way deed

free and clear of all liens and encumbrances, to the County, twenty-five feet (25') along the property's 58th Avenue frontage. (See Exhibit "C").

5. The Developer shall provide stormwater capacity for the following road segments:
 - A. 58th Avenue, from the property's eastern boundary to the centerline of a four-lane road, along the project's 58th Avenue frontage.
 - B. 49th Street, along the project's entire frontage, for a two-lane road width.
 - C. Developer shall design and construct a temporary swale system within the County right-of-way for 53rd Street stormwater, as a four-lane road, from 58th Avenue west for a distance of one-quarter mile.
6. DOT Compliance: All road construction by the Developer pursuant to this Agreement shall be in compliance with Florida Department of Transportation standards:
 - A. Any future increase of impervious area for 58th Avenue Developer driven improvements may require additional stormwater capacity to be provided.
 - B. 49th Street, along the project's entire frontage, for a two-lane road width and any Developer driven improvements such as turn lanes.
 - C. Developer shall design and construct a temporary swale system within the County right-of-way for 53rd Street stormwater for all developer driven improvements that cannot be treated within the existing system. Alternatively, the Developer may work with the County and Mandala Village in accordance with the Mandala Village Developer's Agreement dated December 12th, 2023, Section 9 allowing for a temporary easement for stormwater improvements. The County shall not provide any reimbursement for the temporary easement construction. At the time Mandala Village constructs its permanent stormwater facilities, any Developer driven improvements for Providence Pointe shall connect to Mandala Village's stormwater system as defined in the Mandala Village Developer's Agreement.
7. Invoices: Any invoice submitted by the Developer to the County for the County's payment shall be reimbursed by the County according to the Prompt Payment Act (Sections 218.70 and 218.80, Florida Statutes).
8. Project Bids: The Developer shall not be required to publicly bid the work described herein, but all work performed by the Developer shall be subject to the reasonable determination by the County that the costs incurred for such work were normal and customary.

9. 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 Providence Pointe.
- F. No Building Permit, Certificate of Completion, or Certificate of Occupancy shall be withheld or delayed by the County for Providence Pointe 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 traffic improvements other than the payment of traffic 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 reference 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.

P. Beginning upon the complete execution of this Agreement, the duration of the Agreement shall be 30 years.

Q. The permitted uses for this development project include:

- I. Residential (single-family and multi-family)
- II. Commercial
- III. Retail
- IV. Professional Office
- V. Restaurant
- VI. Health and Fitness
- VII. Institutional
- VIII. Day Care
- IX. Hotel

X. Places of Worship
XI. Public Parks

- R. The permitted land use density for the project is 2.59 units per acre. The proposed land use density for the project is 2.59 units per acre.
- S. The building intensity for the project's residential and commercial uses are below the maximum limitations set for the project, due in part to an excess of open space and recreational areas.
- T. The proposed commercial and residential structures do not exceed the applicable land development regulation (LDR) limitation of 35'.
- U. Public facilities including the construction of roadways and roadway improvements, construction of stormwater drainage improvements, and the construction of public transportation transit stops are included in this project. These facilities are required to be completed as stipulated in this agreement and/or prior to the issuance of a Certificate of Completion.
- V. The following local development approvals are required for this project:
 - I. Rezoning and Conceptual PD Plan approval.
 - II. Preliminary PD Plan/Plat approval.
 - III. Land Development Permit.
 - IV. Final PD Plat approval.
- W. During the PDTND rezoning and Conceptual Planned Development Approval, the project's consistency with the Comprehensive Plan and LDRs was presented at public hearings to both the Indian River County Board of County Commissioners (BCC), and the Planning and Zoning Commission (PZC). Noting the project's consistency with the Comprehensive Plan and LDRs, both Boards voted to approve the rezoning and conceptual plan.

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: _____

Print Name: _____

Approved by:

John Titkanich,, County Administrator

Approved as to Form and Legal Sufficiency

Court and Comptroller

Susan Prado, Deputy County Attorney

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA.

By: _____
Chairman

BCC Approved: _____

Attest: _____
Ryan L. Butler,, Clerk of the Circuit

By: _____
Deputy Clerk

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, as Chairman of the Board of County Commissioners, and _____, as Deputy Clerk, for Ryan L. Butler, who are personally known to me or who have produced _____ as identification.

(Notary Seal)

Printed Name: _____
My Commission Expires: _____

Signed, sealed and delivered
in the presence of:

Print Name: _____

PROVIDENCE POINTE VERO BEACH, LLC

By: THE BARILE FAMILY LIMITED
PARTNERSHIP, Managing Member

Print Name: _____

By: _____
General Partner

STATE OF NEW YORK
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, the General Partner of The Barile Family Limited Partnership, the Managing Member of Providence Pointe Vero Beach 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: _____

