

AGREEMENT BETWEEN
INDIAN RIVER COUNTY, FLORIDA
AND
SAMUEL F. GAGLIANO
FOR
SAM'S HOBBY BARN

FOR THE CONSTRUCTION OF OFF-SITE UTILITIES

THIS AGREEMENT ("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 **SAMUEL F. GAGLIANO, as Trustee of the Samuel F. Gagliano Trust dated the 17th day of March, 2021**, whose mailing address is 242 Oak Hammock Circle, Vero Beach, FL 32962 (hereinafter the "DEVELOPER") is effective upon execution by the two parties ("Effective Date").

WHEREAS, the DEVELOPER, in conjunction with the construction of improvements at Sam's Hobby Barn, is constructing sewer force main facilities to the subject property located at 980 Old Dixie Highway SW, whose legal description is attached as Exhibit "A" (the "Subject Property"); and

WHEREAS, pursuant to Section 918.05, the Code of Indian River County (the "Code"), the COUNTY, requires the DEVELOPER to provide the utility improvements to connect to the regional water main and force main. 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 ("IRCDUS"). The COUNTY shall reimburse the DEVELOPER for installing off-site utilities as outlined below:

The COUNTY shall reimburse the DEVELOPER for oversizing the installation of a sewer force main from 4-inch diameter to 8-inch diameter along the east side of Old Dixie Highway SW from

the termination of the existing 8-inch diameter sewer force main to the south property line of the Subject Property, a distance of approximately 240 linear feet.

2. 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 sewer force main. COUNTY shall reimburse DEVELOPER in accordance with Exhibit "B" for oversizing and extending the off-site sewer force main. The actual reimbursement amounts shall be based on Exhibit "B" but in no event shall the County cost share exceed \$6,730.80.

Within 30 calendar days of acceptance of the bill of sale for the sewer main and submittal of the necessary maintenance security, COUNTY shall reimburse DEVELOPER its share of the cost of the sewer main, as set forth in Exhibit "B".

3. Amendment:

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

4. Assignability:

Either party may assign this Agreement so long as the assignment bears acknowledgment of the assignee and the other party. 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 DEVELOPER, nor any assignee, shall have the right to transfer these rights to another property unless this Agreement is amended in writing.

5. 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.

6. 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.

7. 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 IRCBUS, to Indian River County Public Works for a

Right-of-Way permit (ROW), which includes, but is not limited to meeting all security requirements of section 312.11 of the Code, to the Florida Department of Environmental Protection (FDEP) for a general permit, and for all other necessary permits. The DEVELOPER shall not commence construction until all permits are approved and obtained.

8. 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.

9. DEVELOPER'S Obligations:

The design, preparation of contract documents, permitting, and construction of the sewer main shall be the DEVELOPER's responsibility and expense until such time the necessary testing, acceptance of the FDEP Certification of Completion, and acceptance of the sewer main dedication to IRCDUS per IRCDUS's Water & Wastewater Utility Standards, May 2019 or latest edition, has been completed and a 1-year warranty is in place.

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. Insurance and Indemnification:

The DEVELOPER shall ensure that, at least ten (10) days prior to the commencement of any work, the selected contractor and any subcontractor provides to the COUNTY a certificate of commercial general liability insurance with a reputable insurance company subject to approval by the COUNTY's risk manager in an amount not less than \$3,000,000 combined single limit for bodily injury and property damage in accordance with the COUNTY'S Administrative Policy Manual. The DEVELOPER shall ensure that, at least ten (10) business days prior to the commencement of any work the selected contractor and any subcontractor provides to the COUNTY a certificate of business auto liability insurance with a reputable insurance company

subject to approval by the COUNTY'S risk manager in an amount not less than \$3,000,000 per occurrence combined single limit for bodily injury and property damage in accordance with the COUNTY'S Administrative Policy Manual. The commercial general liability and auto liability insurance policies shall name Indian River County, a political subdivision of the State of Florida, as an additional insured. In addition, the DEVELOPER shall ensure that, at least ten (10) business days prior to the commencement of any work the selected contractor and any subcontractor provides to the COUNTY a certificate of statutory workers' compensation insurance and employers' liability with a limit of \$100,000 for each accident, \$500,000 disease (policy limit) and \$100,000 disease (each employee) in accordance with the COUNTY'S Administrative Policy Manual. The DEVELOPER shall provide to the COUNTY at least thirty (30) days' written notice by registered mail, return receipt requested, addressed to the COUNTY'S risk manager, prior to cancellation or modification of any required insurance.

The DEVELOPER hereby releases and holds harmless the COUNTY, and the COUNTY'S officers, employees and agents (collectively the "Indemnitees"), and each of them from and against any loss, costs, damages, claims, third party claims, expenses (including attorneys' fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or destruction or loss of any property arising out of, resulting from, be occasioned by, or in connection with the performance or nonperformance of any work contemplated by this Agreement which is or is alleged to be directly or indirectly caused, in whole or in part, by any act, default, negligence, 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.

12a. Indemnification Savings Clause:

In the event any of the foregoing indemnification clauses under Section 12 is found to be

unenforceable, it is understood the DEVELOPER shall instead indemnify and hold harmless the COUNTY, its officers, employees and agents, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the DEVELOPER and persons employed or utilized by the DEVELOPER in the performance of this Agreement.

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; (b) Letter of Credit, in the County's standard form, drawn and payable by a financial institution located within Florida; or (c) surety bond issued by a surety company licensed to do business in the State of Florida and having an A.M. Best rating of no less than A-VI. 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 Subject Property. 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 COUNTY shall have the right to terminate this Agreement, and the parties shall have no further obligations to each other.

The DEVELOPER shall comply with reasonable requests 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. DEVELOPER shall meet all necessary IRCDUS construction requirements, including the posting of the required security.

16. Recording of Agreement:

This Agreement, and any assignment, may be recorded in the official records of Indian River County by the COUNTY. If recorded, 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.

20. Release:

DEVELOPER, on behalf of itself and its successors, and assigns, hereby releases, acquits, and forever discharges COUNTY and its respective present and former elected officials, employees, agents, representatives, and insurers, from all claims, causes of action, demands, debts, liabilities, and obligations, of every name and nature, known or unknown, asserted or unasserted, accrued or unaccrued, both at law or in equity, from the beginning of time to the Effective Date.

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

ATTEST: Ryan L. Butler, Clerk of the Circuit
Court and Comptroller

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

BY: _____
Deputy Clerk

By: _____
Susan Adams, Chairman

BCC Approved Date: _____

Approved:

Approved as to form and legal sufficiency:

John A. Titkanich, Jr.
County Administrator

K. Keith Jackman
Assistant County Attorney

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

Signed, sealed and delivered
in the presence of:

DEVELOPER:
**SAMUEL F. GAGLIANO, as Trustee
of the Samuel F. Gagliano Trust
dated the 17th day of March, 2021**

By: _____
Samuel F. Gagliano, Trustee

Signature: _____
Printed Name: _____
Address: _____

Signature: _____
Printed Name: _____
Address: _____

STATE OF FLORIDA
COUNTY OF INDAIN RIVER

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2024 by Samuel F. Gagliano, as Trustee of the Samuel F. Gagliano Trust dated the 17th day of March, 2021, who is ☐ personally known or ☐ produced identification in the form of _____.

NOTARY PUBLIC

NOTARIAL SEAL:

Printed Name: _____
Commission No.: _____
Commission expiration: _____

EXHIBIT "A"

Legal Description

EXHIBIT "B"

Construction Cost Share