

RESOLUTION NO. 2012-216

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY FLORIDA, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN ST JOHNS COUNTY, GK OLD SEBASTIAN LLLP AND OLD SEBASTIAN POINT HOMEOWNERS ASSOCIATION REGARDING TEMPORARY REMOVAL OF A RIGHT OF WAY MEDIAN; PROVIDING FOR THE EFFECT OF RECITALS; AUTHORIZING THE COUNTY ADMINISTRATOR OR DESIGNEE TO EXECUTE THE AGREEMENT AND SUPPLEMENTAL DOCUMENTATION; PROVIDING FOR CORRECTION OF ERRORS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, GK Old Sebastian LLLP, (“Sebastian LLLP”), a Florida limited liability limited partnership and Old Sebastian Point Homeowners Association, Inc., (“Association”) a Florida not for profit corporation and located in St Johns County, Florida, desire to enter into an Agreement with St. Johns County (the “County”) for temporary removal of the median located at the intersection of Lewis Speedway and DOT Road located within lands that have been dedicated to the County as rights-of-way along a portion of Lewis Speedway located in St. Johns County; and

WHEREAS, the COUNTY has reviewed the terms, provisions, and requirements of the Agreement, and has determined that accepting the terms of the agreement services the public interests of the citizens of St. Johns County.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA AS FOLLOWS:

Section 1. The above recitals are hereby incorporated into the body of this Resolution and adopted as findings of fact.

Section 2. The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of the attached Median Right of Way Agreement and authorizes the County Administrator, or designee, to execute said Agreement.

Section 3. The Board of County Commissioners further authorizes the County Administrator, or designee, to execute any supplemental paperwork/documentation necessary to accomplish the overall goal set forth in the Agreement.

Section 4. To the extent that there are typographical, scrivener or administrative errors that do not change the tone, tenor, or concept of this Resolution, this Resolution may be revised without subsequent approval by the Board of County Commissioners.

Section 5. The Clerk of Court is instructed to record the original Median Right of Way Agreement in Official Records of St. Johns County, Florida.

Section 6. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 21st day of August, 2012.

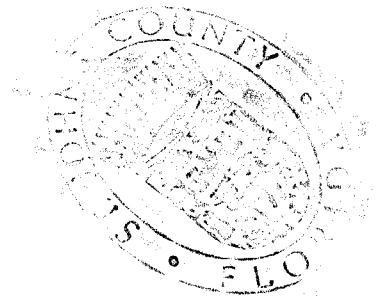
BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

Attest: Pam Halterman
Deputy Clerk

By: J. Ken Bryan
J. Ken Bryan, Chair

Effective Date: August 21, 2012

RENDITION DATE 8/23/12



RIGHT-OF-WAY MEDIAN AGREEMENT

THIS RIGHT-OF-WAY MEDIAN AGREEMENT (this "**Agreement**") is entered into this ___ day of July, 2012, by and among **GK OLD SEBASTIAN LLLP**, a Florida limited liability limited partnership, whose address is 8875 Hidden River Pkwy., Suite 150 Tampa, FL 33637 (the "**Developer**"), **OLD SEBASTIAN POINT HOMEOWNERS ASSOCIATION, INC.**, a Florida not for profit corporation, whose address is 6972 Lake Gloria Blvd., Orlando, FL 32809 (the "**Association**") and **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is 500 San Sebastian View, St. Augustine, FL 32084 (the "**County**").

W I T N E S S E T H:

WHEREAS, Developer, or its predecessor-in-interest or its predecessor-in-title, has developed and/or constructed a subdivision within the Whispering Creek PUD known as Old Sebastian Point (the "**Subdivision**"); and

WHEREAS, the Subdivision is located north of the intersection of DOT Road and Lewis Speedway (the "**Intersection**"); and

WHEREAS, the Intersection presently contains a concrete median on Lewis Speedway, as depicted on **Exhibit "A"** attached hereto, which prevents cars from making a left turn off of DOT Road onto Lewis Speedway and prevents cars from making a left turn off of Lewis Speedway onto DOT Road (the "**Median**"); and

WHEREAS, the Intersection was designed and constructed consistent with the plans approved in connection with the Whispering Creek PUD to be safe and appropriate for the traffic conditions that were forecast to exist when the Subdivision's traffic impacts were added to other anticipated traffic volumes that were anticipated to impact the Intersection; and

WHEREAS, due to the slow economy and the lack of construction near the area other than in the Subdivision, traffic levels have not yet reached a point where the Median is necessary at this time; and

WHEREAS, the County has agreed to temporarily remove the Median until such time as traffic levels reach the point where the Median is necessary all as set forth in this Agreement; and

WHEREAS, Developer has agreed to provide a cash escrow as security for the payment of the costs associated with the removal of the Median and the subsequent reinstallation of the Median.

WHEREAS, in order to obtain the issuance of a Certificate of Completion with respect to the Improvements, the Developer desires to guaranty such maintenance, materials, and workmanship by providing the County with a cash escrow.

NOW THEREFORE, the parties agree as follows:

1. **Effective Date.** This Agreement shall become effective on the date when the last of the parties hereto has executed this Agreement (the "**Effective Date**"). If this Agreement is not executed by the Developer and the Association and delivered to the County within thirty (30) days of approval, this Agreement shall become null and void.

2. **Removal of Median.** Within forty-five (45) days after the Effective Date, the County shall commence work to remove the Median and reconfigure the Intersection to allow both left and right turns off of DOT Road onto Lewis Speedway and to allow both left and right turns off of Lewis Speedway onto DOT Road (the "**Removal Work**"). Upon commencing the Removal Work, the County shall diligently proceed to complete the Removal Work and anticipates that the Removal Work shall be completed on or prior to fourteen (14) days following commencement of the Removal Work.

3. **Re-Installation of Median.** The County may re-install the Median at the Intersection or reconfigure the intersection as required at any time (the "**Re-Installation Work**"). Any re-installation work is in the County's sole discretion and may be in whatever configuration determined by the County, guided by the following: (i) the Level of Service on the segment of Lewis Speedway which includes the Intersection falling to the Level of Service "C" or below, as reasonably determined by the County Engineering Division; or (ii) a determination by the County that traffic safety calls for the re-installation of the Median or a reworking of those intersections. The County shall provide the Association and the Developer with at least thirty (30) days notice prior to commencing the Re-Installation Work, and although in the County's sole discretion, the County will seek to provide reasonable documentation evidencing such reasoning for re-installation.

4. **Establishment of Cash Escrow.** The County anticipates that the Removal Work and the Re-Installation Work can be completed for less than **TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00)**. Within three (3) business days of the Effective Date, Developer shall provide to the County and does hereby establish a cash escrow fund with the County in the amount of **TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00)** to cover the County's costs and expenses relating to both the Removal Work and the Re-Installation Work (the "**Cash Escrow**"). The Cash Escrow shall be placed by the County in an account at a local financial institution and shall be disbursed only in accordance with the terms of this Agreement. The Cash Escrow may be co-mingled with other funds of the County. The County may draw on the Cash Escrow to perform the Removal Work and the Re-Installation Work. Upon completion of the Removal Work the County shall provide to the Developer an accounting of the funds expended for the Removal Work and the balance that remains in the Cash Escrow. Upon completion of the Re-Installation Work, the County shall provide to the Developer an accounting of the funds expended for the Re-Installation Work along with any balance remaining in the Cash Escrow. In the event the costs relating to the Removal Work and the Re-Installation Work exceed the amount of the Cash Escrow, the County shall be responsible for such excess costs. Developer's liability for the costs and expenses relating to the Removal Work and the Re-Installation Work is limited to the amount of the Cash Escrow. The Association shall have no liability for the costs and expenses relating to the Removal Work and the Re-Installation Work.

5. **Notice to Homeowners.** Within ten (10) days of the Effective Date the Association shall notify each of the homeowners in the Subdivision of the existence of this Agreement by providing each with a copy of this Agreement or a summary of the terms of this Agreement. The Association shall also keep copies of this Agreement available at any sales offices within the Subdivision for distribution upon request of existing or potential homeowners within the Subdivision. In addition, the Association shall take such reasonable steps as are necessary to endeavor to provide each prospective purchaser within the Subdivision notice of the existence and terms of this Agreement.

6. **Representations.** The parties hereto represent and warrant to each other that they have taken all necessary action to enter into this Agreement and carry out the obligations contained herein. Each party agrees to indemnify, protect, defend and hold each other harmless, to the extent permitted by law, from any liability, loss, claim, action, cause of action, suit, or demand, including, without limitation, court costs and attorneys' fees, in the event any of the representations herein are not true and correct in all respects.

7. **Successors and Assigns.** This Agreement shall run with the property and be binding upon, inure to and be for the benefit and burden of the parties hereto and their respective successors and assigns and any person, firm, corporation or entity who may become the successor in interest to the property or any portion thereof.

8. **Notices.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

County: County Administrator
500 San Sebastian View
St. Augustine, FL 32084

Telephone: (904) 209-0533

With a copy to: County Attorney
500 San Sebastian View
St. Augustine, FL 32084

Telephone: (904) 209-0805

With a copy to: County Engineer
2740 Industry Center Road
St. Augustine, FL 32084

Telephone: (904) 209-0110

Association: Old Sebastian Point Homeowners Association, Inc.
6972 Lake Gloria Blvd.
Orlando, FL 32809
Phone: (813) 615-1244
Fax: (813) 615-1461
E-mail: jharvey@kolter.com

With a copy to: Kolter Group, LLC
Attention: Howard Erbstein
701 S. Olive Ave., Suite 104
West Palm Beach, FL 33401
Phone: 561-682-9500
Fax: 561-892-5279
E-mail: Legalnotice@kolter.com

With a copy to: Shuffield, Lowman & Wilson, P.A.
Attention: Scott A. Cookson
1000 Legion Place, Suite 1700
Orlando, FL 32801
Phone: 407-581-9800
Fax: 407-581-9801
E-mail: scookson@shuffieldlowman.com

Developer: Gk Old Sebastian LLLP
c/o The Kolter Group LLC
Attn: Jim Harvey
8875 Hidden River Pkwy., Suite 150
Tampa, FL 33637
Phone: (813) 615-1244
Fax: (813) 615-1461
E-mail: jharvey@kolter.com

With a copy to: Kolter Group, LLC
Attention: Howard Erbstein
701 S. Olive Ave., Suite 104
West Palm Beach, FL 33401
Phone: 561-682-9500
Fax: 561-892-5279
E-mail: Legalnotice@kolter.com

With a copy to: Shuffield, Lowman & Wilson, P.A.
Attention: Scott A. Cookson
1000 Legion Place, Suite 1700
Orlando, FL 32801
Phone: 407-581-9800
Fax: 407-581-9801
E-mail: scookson@shuffieldlowman.com

9. **Construction.** Each party hereto hereby acknowledges that all parties hereto participated equally in the negotiating and drafting of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one party than any other.

10. **Severability.** If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any party hereunder or substantially increase the burden of any party hereunder, shall be held invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

11. **Applicable Law.** This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida, with venue in the Circuit Court in and for St. Johns County, Florida.

12. **Amendments.** No amendment, modification or other change to this Agreement shall be binding upon the parties unless in writing and executed by all parties hereto.

13. **Counterparts.** This Agreement may be executed in any number of counterparts, and all of which taken together shall constitute one and the same Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed as of the date and year first above written.

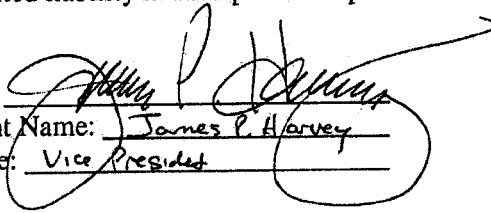
COUNTY:

ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida

By: _____
Print Name: _____
Title: _____

DEVELOPER:

GK OLD SEBASTIAN LLLP, a Florida limited liability limited partnership

By: 
Print Name: James P. Harvey
Title: Vice President

ASSOCIATION:

OLD SEBASTIAN POINT HOMEOWNERS ASSOCIATION, INC., a Florida not for profit corporation


By: 
Print Name: David B. Langhous
Title: Vice President

EXHIBIT "A"

Depiction of DOT Road and Lewis Speedway Intersection

