

RESOLUTION NO. 2014 361

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AMENDING THE FISCAL YEAR 2015 BUDGET AND ACCEPTING UNANTICIPATED REVENUE FROM SILVER CREEK, LLLP FOR THE SILVER CREEK ASSISTED LIVING FACILITY ENTRY ROAD AND ASSOCIATED UTILITIES AS PART OF A CDBG GRANT FROM THE U.S. DEPARTMENT OF HUD; AND AUTHORIZING ITS EXPENDITURE BY THE PUBLIC WORKS DEPARTMENT AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, the U.S. Department of HUD Small Cities Community Development Block Sub-Grant Agreement with the Florida Department of Economic Opportunity provides funding for infrastructure improvement projects that ultimately provide jobs to communities; and

WHEREAS, St. Johns County, Florida (the "County"), recognizes the importance of the grant to provide funding for the Silver Creek Assisted Living Facility Entry Road and associated Utilities project. Such project will benefit St. Johns County by providing an Assisted Living Facility with full time jobs fulfilling economic development goals of the County; and

WHEREAS, by this action the County acknowledges the unanticipated revenue in the amount of \$146,753, which is the difference between the Low Bid amount and the CDBG grant, to satisfy a Developer Agreement between St. Johns County and Silver Creek LLLP in order to award the construction of said Entry Road and Associated Utilities; and

WHEREAS, the County has competitively bid out the project for construction and administer the grant for the Silver Creek Assisted Living Facility Entry Road and associated Utilities; and

WHEREAS, the County previously recognizes the award of the grant from the U.S. Department of HUD in the amount of \$750,000 and St. Johns County is not required any matching funds for said construction; and

WHEREAS, the Board of County Commissioners of St. Johns County (the "Board") deems it necessary, desirable and in the best interests of the County to approve

the receipt of unanticipated revenue, all in the manner and to the extent hereinafter provided.

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

Section 1. Incorporation of Recitals.

The above Recitals are incorporated into the body of this Resolution, and such Recitals are hereby adopted as findings of fact.

Section 2. Approval and Authorization.

The Development Fees budget shall be adjusted to account for unanticipated revenue funds received from Silver Creek, LLLP in the amount of \$146,753 for fiscal year 2015.

Section 3. Errors and Omissions.

To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

Section 4. Severability.

If any provision of this Resolution shall be held or deemed to be illegal, inoperative or unenforceable, the same shall not affect any other provision or cause any other provision to be invalid, inoperative or unenforceable to any extent whatsoever.

Section 5. Effective Date.

This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida this 7th day of October, 2014.

**BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA**



John H. Morris, Chair

RENDITION DATE 10/10/14

ATTEST: Cheryl Strickland, Clerk

Pam Halteman

Deputy Clerk

Prepared by/Return to:
Ellen Avery-Smith, Esq.
Roger Towers, P.A.
100 Whetstone Place, Suite 100
St. Augustine, Florida 32086

Parcel ID No.: 102782-0043

Res 2013-70

DEVELOPER'S AGREEMENT

THIS DEVELOPER'S AGREEMENT ("Agreement") is made and entered effective as of the 2 day of April 2012³ between the **BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida ("County"), and **SILVER CREEK, LLLP**, a Florida limited liability limited partnership ("Developer").

WHEREAS, Developer has requested the County provide it with economic development assistance by constructing certain roadway, sidewalk, electrical service, and water and wastewater utility system improvements (collectively, the "Infrastructure") to service a 33-acre parcel known as St. Johns County Property Appraiser's Parcel No. 102782 0043 located on the north side of SR 207 in unincorporated St. Johns County, Florida ("Property"); and

WHEREAS, Developer has acquired the Property and plans on constructing an assisted living facility and related health care facilities thereon, and

WHEREAS, the County has applied to the Florida Department of Economic Opportunity ("Department") for Community Development Block Grant Program Assistance ("Grant") to help fund construction of the Infrastructure from State Road 207 to the Property; and

WHEREAS, the Grant has been awarded to the County; and

WHEREAS, the County has accepted the Grant but will construct the Infrastructure with the Grant proceeds only upon assurances from Developer that it will develop the Project (as hereinafter defined) on the Property and conform to all requirements of the Department and the Grant and that it will agree to pay all costs associated with the installation of the Infrastructure in excess of the amount funded by the Grant; and

WHEREAS, the Developer has agreed to develop the Project on the Property, to conform to all requirements of the Department and the Grant, and to pay all costs associated with installation of the Infrastructure to the Property in excess of the amount funded by the Grant.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **PROJECT.** The Developer shall construct an assisted living facility containing approximately one hundred twenty four (124) assisted living beds and sixty (60) assisted living memory care beds (the "Project") on the Property. The Infrastructure will be constructed within an 80-foot right-of-way owned by a third party that leads from State Road 207 to the Property (the "Right-of-Way").
2. **GRANT.** The County has received the Grant, which has grant number 12DB-OH-04-65-01-E07, in the amount of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) to pay for construction of the Infrastructure to benefit the

Project. The County hereby agrees to administer said Grant subject to the conditions set forth herein.

3. **COST OF ENGINEERING AND ADMINISTRATION.** All engineering services related to constructing the Infrastructure will be performed by an engineering firm selected and funded by the Developer. All Grant administrative services will be carried out by a consultant selected and funded by the Developer. Both the engineering firm and grant administrator selected by the Developer to carry out such services must be acceptable to the County.
4. **DESIGN REVIEW BIDDING AND CONSTRUCTION OBSERVATION.** The County shall have final review and approval of design for the Infrastructure to be constructed with the Grant funds. The County shall be responsible for bidding, awarding, contracting, issuing Notice to Proceed to the contractor, carrying out and approving all Infrastructure construction activities.
5. **COSTS OF CONSTRUCTION.** The parties hereto do not believe the cost of constructing the Infrastructure will exceed the amount of the Grant proceeds. However, in the event such costs do exceed the amount of the Grant proceeds, construction of the Infrastructure shall not begin until County and Developer have approved any bid amounts in excess of the Grant proceeds available for such construction and the Developer, at its option, either has escrowed with the County funds in the amount of the construction contract in excess of the available Grant proceeds or has posted a performance bond in such amount as security for the payment of excess construction costs. All change orders to the construction contract shall be approved by both the County and Developer prior to being executed. The Developer shall, at its option, either place in escrow with the County an amount equal to the funds required to pay for any approved change orders to the construction contract or post a performance bond with the County in such amount as security for change order costs prior to the change order being executed. The County shall be permitted to release the escrowed funds or draw on the performance bond posted by the Developer pursuant to this section only upon receipt of all applicable statutory lien waivers and releases from the contractor and all applicable subcontractors.
6. **COST OF UPSIZING.** The Developer agrees to escrow with the County funds necessary to pay the cost of any upsizing of the electrical, potable water and wastewater utility lines, equipment and other improvements required for use by future tenants of the Developer not associated with the Project and of the property owner deeding the Right-of-Way to the County (the "Adjacent Owner") being installed as part of the Infrastructure. The County shall be permitted to release the funds escrowed by the Developer pursuant to this section only upon receipt of all applicable statutory lien waivers and releases from the contractor and all applicable subcontractors.
7. **COST OF UPGRADING STREET LIGHTING, LANDSCAPING AND SIGNAGE.** The Developer agrees to escrow with the County the funds to pay for any upgrading of the street lighting, landscaping and signage installed as part of the Infrastructure above the minimum improvements required by County Code. The County shall be permitted to release the funds escrowed by the Developer pursuant to this section only upon receipt of all applicable statutory lien waivers and releases from the contractor and all applicable subcontractors.

8. **FACILITATING THE DEEDING OF THE ENTRANCE RIGHT-OF-WAY.** The Developer agrees to facilitate the deeding of the Right-of-Way from the Adjacent Owner to the County. It is the parties' intent that the Infrastructure be constructed within said Right-of-Way. Both the Developer and the County agree it is the intent of both parties hereto that the deed to the Right-of-Way be executed by the Adjacent Owner and held in escrow by the County Attorney prior to placing Infrastructure design and construction out for bids. Once the Infrastructure, located within the Right-of-Way, has been constructed and the Adjacent Owner and the County have accepted the Infrastructure, the deed giving ownership of the Right-of-Way to the County shall be recorded.
9. **TEMPORARY CONSTRUCTION EASEMENT.** The parties shall work together to secure from the Adjacent Owner a temporary construction easement required for the construction and installation of the Infrastructure within the Right-of-Way.
10. **MAINTENANCE OF RIGHT-OF-WAY.** The Developer agrees to maintain the Infrastructure constructed within the Right-of-Way in perpetuity. The Developer further agrees to record a deed restriction on the Property indicating maintenance of the Infrastructure within the Right-of-Way shall be the responsibility of the owner of the Property and shall run with title to the Property in perpetuity.
11. **SECURITY FOR PERFORMANCE.** Should the County be required to refund all or a portion of the Grant proceeds to the Department, for any reason attributable to the Developer, the Developer will pay to the County the amount demanded by the Department. Said payment shall be made in good funds and received by the County no later than five (5) business days prior to the date that the funds are due from the County to the Department. Should the Department refuse to disburse any Grant proceeds to the County to pay for construction costs of the Infrastructure incurred by the County for any reason attributable to the Developer, the Developer will pay sufficient funds to the County to make said payments within five (5) business days after being notified of the Department's refusal. Should the Department subsequently disburse the funds to the County, the County will pay over said funds to Developer. To evidence its obligations hereunder, the Developer shall provide either an improvements bond or an irrevocable letter of credit, in the form attached to this Agreement as **Exhibit "A"**, in favor of the County with a face amount of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00). The bond or letter of credit shall be posted and provided to the County no later than the date the County commences construction of or contracts for construction services for the Infrastructure within the Right-of-Way. The County shall only be permitted to request payment from the bond or letter of credit if Developer fails to pay over monies to the County as required under this paragraph and then only to the extent of the nonpayment. The bond or letter of credit will be canceled upon the successful completion of construction of the project and closeout of the Grant. All costs of administering the bond or letter of credit shall be paid by Developer.
12. **ADMINISTRATION AND CONSTRUCTION.** The County will oversee administration of the Grant funds, compliance with Grant requirements, design, bidding, inspection, and construction of the Infrastructure. If the County is required to refund the Grant proceeds or if the Department refuses to disburse any

Grant proceeds to the County to pay cost incurred for any reason attributable to the County's failure to properly administer the Grant funds or comply with the requirements of this Agreement, the County shall be responsible for paying the amount of the refunded or retained proceeds and Developer will not be required to reimburse the County for those proceeds.

13. **LIABILITY.** To the extent permissible by law, Developer shall indemnify, defend and hold the County harmless from, and against, all claims and reasonable costs associated with Developer's performance under this Agreement.
14. **ACCEPTANCE OF MONIES UNDER THE GRANT.** The County will accept monies under the Grant only upon the Developer entering into a Participating Party Agreement under the Community Development Block Grant Program, which agreement is acceptable to all parties.
15. **RECORDING.** This Agreement may be recorded in the public records of St. Johns County, Florida. Upon completion of construction of the Infrastructure, payment of all costs of constructing the Infrastructure and dedication of the Right-of-Way to the County, a Notice of Termination of this Agreement shall be recorded in the public records of St. Johns County, Florida.
16. **MISCELLANEOUS PROVISIONS.**
 - A. **Modification.** Either party may request modification of the provisions of this Agreement. Changes that are mutually agreed upon shall be valid only when in writing, signed by each of the parties, and attached to and incorporated in this Agreement.
 - B. **Assignment.** In light of the scope and rationale for this Agreement, neither the County nor the Developer may assign, transfer, and/or sell any of the rights noted in this Agreement, or associated with this Agreement, without the express written approval of the other party.
 - C. **Governing Law and Venue.** This Agreement shall be construed and governed in accordance with the laws of the State of Florida. Venue for any actions arising out of this Agreement shall be St. Johns County, Florida.
 - D. **Compliance with Applicable Laws.** Both the County and Developer shall abide by, and comply with, all applicable laws, rules, regulations, orders and policies of the local, state and federal governments.
 - E. **Public Records.** The County reserves the right to unilaterally terminate this Agreement if the Developer refuses to allow public access to all documents, papers, letters, or other materials created or received under this Agreement and otherwise subject to the provisions of Chapter 119, Florida Statutes.
 - F. **Severability.** If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of such conflict, and shall be

severable, but shall not invalidate any other provision of this Agreement.

17. **MULTIPLE ORIGINALS.** This Agreement is executed in multiple copies, each copy of which shall be deemed an original.
18. **AUTHORITY TO EXECUTE.** Each party covenants to the other party/parties that it has the lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals:

ST JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS:

[Signature]
John H. Morris, St. Johns County Board of County Commissioners Chairman

Attested By:

[Signature]
Michael D. Wanebeck, County Administrator

LEGALLY SUFFICIENT
[Signature]
Name _____
Date: 7/1/13

STATE OF FLORIDA)
)
COUNTY OF ST. JOHNS)

3 The foregoing instrument was acknowledged before me this 2 day of April, 2012, by John H. Morris, as BOCC Chairman of St. Johns County, Florida, on behalf of St. Johns County, Florida, who is personally known to me or who has produced _____ as identification and who did take an oath.



[Signature]
Notary Public, State of Florida
Print Name: Pamela Halterman
My Commission Expires: 8/15/13
My Commission No.: AD908233

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

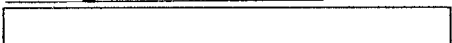


SILVER CREEK, LLLP, a Florida limited liability
limited partnership

By: Mitchell R. Montgomery
Name: M. MITCHELL R. MONTGOMERY
Title: PARTNER

STATE OF FLORIDA)
)
COUNTY OF St Johns)

The foregoing instrument was acknowledged before me this 28th day of March,
2012, by Mitchell R. Montgomery as Partner of Silver Creek, LLLP,
a Florida limited liability limited partnership, on behalf of the partnership, who is ___
personally known to me or who has produced FL DL # as identification and
who did take an oath.



Melissa A. Lundquist
Notary Public, State of Florida
Print Name: Melissa A. Lundquist
My Commission Expires: 1/8/17
My Commission No.: EE 863529

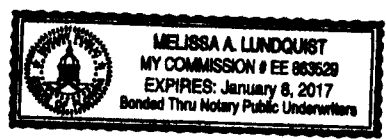


EXHIBIT "A"

FORM OF REQUIRED IMPROVEMENTS BOND

Bond no. _____

KNOW ALL MEN BY THESE PRESENTS, that we _____, a
_____ corporation,
_____ as Principal, and _____
authorized to do business in the State of Florida, as Surety, are held and firmly bound unto the
Board of County Commissioners of St. Johns County, St. Johns County Courthouse, St.
Augustine, Florida 32084 as Obligee, in the penal sum of _____
U.S. DOLLARS, lawful money of the United States of America, for the payment of which well and truly
to be made, we bind ourselves, our heirs, executors, administrators, successors, and
assigns, jointly and severally, firmly by these presents, for a period of 12 months from the date of
issuance with an **automatic renewal clause**.

WHEREAS, _____

Address: _____

has agreed to construct and maintain to county standards the following improvements:

- 1) Roads Drainage and Utility improvements within _____.
- 2.) The Required Improvements Bond shall be issued with an automatic renewal clause. Each year sixty (60) days prior to the annual renewal date the owner or assign shall submit to the County an updated cost estimate to insure the adequacy of the existing Required Improvements Bond per Sec. 6.04.08 of the St. Johns County Land Development Code.
- 3) Said required improvements and/or repair having been required to be completed and accepted by the Board of County Commissioners under St. Johns County Ordinance No. 99-51 effective September 15, 1999, as amended.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal shall maintain the improvements herein described and shall save the Obligee harmless from any loss, cost or damage by reason of its failure to complete said work, then this obligation shall be null and void; otherwise to remain in full force and effect.

Signed, sealed and dated this _____ day of _____, 20_____

Principal By: _____

Title _____

Surety By: _____

Title _____

Surety Contact Name _____

Surety Contact Phone # _____

FORM OF REQUIRED LETTER OF CREDIT

**IRREVOCABLE LETTER OF CREDIT# _____
FOR REQUIRED IMPROVEMENTS**

DATE: _____

APPLICANT & ADDRESS

BENEFICIARY

AMOUNT: \$ _____
US DOLLARS

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY
4040 LEWIS SPEEDWAY
ST. AUGUSTINE, FLORIDA 32084
ATTN: VALERIE PACETTI, DEVELOPMENT REVIEW

YOU ARE AUTHORIZED TO VALUE ON _____ BANK OF
_____ FLORIDA BY DRAWING DRAFTS
AT SIGHT ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. A notarized statement signed by an authorized representative of the board of County Commissioners of St. Johns County certifying that _____,
has failed to complete its agreement to construct and maintain the following required improvements to County Standards :

Roads, drainage and utilities within: _____

2. The Required Improvements letter of credit shall be issued with an automatic renewal clause. Each year sixty (60) days prior to the annual renewal date the owner or assign shall submit to the County an updated cost estimate to insure the adequacy of the existing Required Improvements letter of credit per Sec. 6.04.08 of the St. Johns County Land Development Code.

Said required improvements or repairs having been required to be completed and accepted by the Board of County Commissioners under St. Johns County Ordinance No. 99-51 effective September 15, 1999, as amended.

3. Original of this Letter of Credit

THE AMOUNT OF ANY DRAFT DRAWN UNDER THIS CREDIT MUST BE ENDORSED ON THE REVERSE HEREOF. ALL DRAFTS MUST BE MARKED "DRAWN UNDER _____
BANK OF _____, FLORIDA LETTER OF CREDIT NUMBER _____
DATED _____.

THIS CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500".

WE HEREBY AGREE THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT WILL BE DULY HONORED BY US ON DELIVERY OF DOCUMENTS AS SPECIFIED ABOVE.

AUTHORIZED SIGNATURE and TITLE

RESOLUTION NO. 2013- 70

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING ACCEPTANCE OF GRANT FUNDS AND EXECUTION OF A U.S. DEPARTMENT OF HUD SMALL CITIES COMMUNITY DEVELOPMENT BLOCK SUB-GRANT AGREEMENT WITH THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, AUTHORIZING THE CHAIR OF THE BOARD OF COUNTY COMMISSIONERS OR HIS DESIGNEE TO EXECUTE THE CONTRACT AND ALL SUBSEQUENT REQUIRED DOCUMENTS ON BEHALF OF THE COUNTY AND AMENDING THE FISCAL YEAR 2013 TRANSPORTATION TRUST FUND BUDGET TO RECOGNIZE AND APPROPRIATE THE GRANT.

RECITALS

WHEREAS, in its efforts to encourage economic development, the Board of County Commissioners ("Board") considered and approved submission of an application to the U.S. Department of Housing and Urban Development ("HUD") Community Development Block Grant ("CDBG") Program, as administered by the Florida Department of Economic Opportunity ("DEO"), to aid in funding infrastructure improvements associated with development of the Silver Creek Assisted Living Facility ("Project"); and

WHEREAS, the DEO selected the County's application for the award of grant funding in the amount of \$750,000, and subsequently on July 17, 2012, the Board adopted Resolution 2012-194, authorizing the Chair (or designee) to execute the required HUD Small Cities CDBG Sub-Grant Agreement subject to the terms and conditions contained therein; and

WHEREAS, the Project developer, Montgomery Land Co., did not finalize its financing obligations within the timeframe provided under the terms and conditions of the Sub-Grant Agreement; and

WHEREAS, in its continued efforts to encourage economic development, the Board conducted two public hearings on September 4, 2012 and October 18, 2012, to again consider submission of an application to the HUD CDBG Program as administered by the DEO, to aid in funding infrastructure improvements associated with development of the Project; and

WHEREAS, the DEO has selected the County's application for the award of grant funding in the amount of \$750,000, and has forwarded the required Sub-Grant Agreement (attached hereto and incorporated herein) governing use of the funds to the County for execution; and

WHEREAS, construction of the proposed facility will provide an economic benefit to the County through the expenditure of construction funds and the creation of approximately 180 full-time jobs when the full development is complete; and

WHEREAS, many of the jobs will benefit low and moderate income individuals; and

WHEREAS, the Board has reviewed the terms and conditions of the Sub-Grant Agreement, and determined it serves a public purpose and the interests of St. Johns County; and

WHEREAS, in the preparation of the St. Johns County Board of County Commissioners Fiscal Year 2013 budget, OMB did not anticipate the award of a U.S. Department of Housing and Urban Development ("HUD") Community Development Block Grant ("CDBG") Program in the amount of \$750,000, as administered by the Florida Department of Economic Opportunity ("DEO").

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

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such recitals are adopted as findings of fact.

Section 2. Resolution 2012-194 is hereby rescinded.

Section 3. The Board authorizes the Chair, or designee, to execute the HUD Small Cities CDBG Sub-Grant Agreement with the Florida Dept. of Economic Opportunity, governing the use of grants funds in the amount of \$750,000 for infrastructure improvements related to development of the Project. The Board further authorizes the Chair, or designee, to execute any subsequent agreements and/or documents as required for receipt and administration of such grant funds. The Board further authorizes amending the Fiscal Year 2013 Transportation Trust Fund to recognize and appropriate the \$750,000 grant.

Section 4. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor or context of this Resolution, then this Resolution may then be revised without the subsequent approval of the Board of County Commissioners.

PASSED AND ADOPTED this 2 day of April, 2013.

**BOARD OF COUNTY COMMISSIONERS ,
ST. JOHNS COUNTY, FLORIDA**

By: _____

John H. Morris, Chairman

ATTEST: Cheryl Strickland, Clerk

By: Paul Halterman
Deputy Clerk

