

RESOLUTION NO. 2020-490

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF A MEMORANDUM OF UNDERSTANDING REGARDING PARK IMPACT FEE CREDITS WITH TWIN CREEKS DEVELOPMENT ASSOCIATES, LLC AND TWIN CREEKS VENTURES, LLC; AND AUTHORIZING THE CHAIR TO EXECUTE THE MEMORANDUM OF UNDERSTANDING ON BEHALF OF THE COUNTY.

RECITALS

WHEREAS, St. Johns County has entered into a certain Park Impact Fee Credit Agreement with Twin Creeks Development Associates, LLC and Twin Creeks Ventures, LLC (collectively, the “Developer”), dated June 27, 2016, and recorded on June 29, 2016 in Official Records Book 4214, Page 1571, Public Records of St. Johns County, Florida (“Park Agreement”); and

WHEREAS, the Park Agreement provides, among other things, that the Developer would dedicate land for a 22-acre public park land site (the “Community Park”) and make certain other improvements, which would be recognized as meeting the requirements for park impact fee credits under St. Johns County Ordinance No. 87-58, as amended, (“Parks Impact Fee Ordinance”) in an agreed-upon amount equal to the appraised value of the dedicated land and the estimated cost of the capital improvements related thereto; and

WHEREAS, more specifically, in the Park Agreement, the County and the Developer agreed that the total park impact fee credits were properly calculated to be the maximum amount of Three Million Two Hundred Thirty Thousand Four Hundred Fifty-Eight and No/100 Dollars (\$3,230,458.00), in exchange for the Developer’s contribution and dedication of the Community Park site and the design, permitting and construction of four lighted, multi-purpose fields within the Community Park (the “Field Improvements”), and the design, permitting, bonding and construction of an access road and related water and sewer utilities from the Development Parcel to the Community Park site (the “Access Road Construction”); and

WHEREAS, the Developer has contributed and dedicated the Community Park site to the County, with an appraised value of One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00) as set forth in Exhibit “C” to the Park Agreement, and has received from the County an equivalent amount of parks impact fee credits; and

WHEREAS, the Developer has completed construction of a portion of a road, now known as Twin Creeks Drive, and related water and sewer utilities, the actual cost of which totals One Million Nine Hundred Sixty-Four Thousand Eight Hundred Ninety-Eight and 16/100 Dollars (\$1,964,898.16); and

WHEREAS, a good faith dispute has arisen between the County and the Developer as to whether the Developer’s construction of the portion of Twin Creeks Drive and related water and

sewer utilities constitutes the Access Road Construction required under the Park Agreement and whether the Developer is, therefore, is currently entitled to receive park impact fee credits in an amount equal to the actual costs of said construction; and

WHEREAS, the County and the Developer wish to forever resolve their dispute and to set forth in the Memorandum of Understanding, attached hereto as Exhibit A and incorporated herein, their common understanding and interpretation as to the Access Road Construction required under the Park Agreement, while recognizing the benefit to the Developer of the timely receipt of impact fee credits and the benefit to the County of the completion of the road construction; and

WHEREAS, entering into the Memorandum of Understanding serves the interest of the County and resolves uncertainties in the best interest of the public and for a public purpose.

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

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

Section 2. The Board of County Commissioners hereby approves the terms, conditions, provisions, and requirements of the Memorandum of Understanding with Twin Creeks Development Associates, LLC and Twin Creeks Ventures, LLC, and authorizes the Chair of the Board of County Commissioners to execute the Agreement on behalf of the County in substantially the same form and format as attached.

Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 15 day of December, 2020.

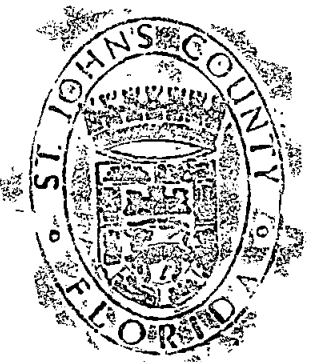
BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

By: Jeremiah R. Blocker
Jeremiah R. Blocker, Chair

ATTEST: Brandon J. Patty, Clerk of the Circuit Court & Comptroller

By: Sam Halterman
Deputy Clerk

RENDITION DATE 12/22/20



MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into by and between ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida (“County”), whose address is 500 San Sebastian View, St. Augustine, Florida 32084, and TWIN CREEKS DEVELOPMENT ASSOCIATES, LLC, a Florida limited liability company (“TCDA”), whose address is 100 East Linton Blvd., Suite 211B, Delray beach, Florida 33483, and TWIN CREEKS VENTURES, LLC, a Florida limited liability company (“TCV,” and together with TCDA, the “Developer”), whose address is 1 Town Center Road, Suite 600, Boca Raton, Florida 33486.

RECITALS

WHEREAS, the County and the Developer (collectively, the “Parties”) have entered into a certain Park Impact Fee Credit Agreement, dated June 27, 2016, and recorded on June 29, 2016 in Official Records Book 4214, Page 1571, Public Records of St. Johns County, Florida (“Park Agreement”); and

WHEREAS, the Park Agreement provides, among other things, that the Developer would dedicate land for a 22-acre public park land site (the “Community Park”) and make certain other improvements, which would be recognized as meeting the requirements for park impact fee credits under St. Johns County Ordinance No. 87-58, as amended (“Parks Impact Fee Ordinance”), in an agreed-upon amount equal to the appraised value of the dedicated land and the estimated cost of the capital improvements related thereto; and

WHEREAS, more specifically, in the Park Agreement, the Parties agreed that the total park impact fee credits were properly calculated to be the maximum amount of Three Million Two Hundred Thirty Thousand Four Hundred Fifty-Eight and No/100 Dollars (\$3,230,458.00), in exchange for the Developer’s contribution and dedication of the Community Park site and the design, permitting and construction of four lighted, multi-purpose fields within the Community Park (the “Field Improvements”), and the design, permitting, bonding and construction of an access road and related water and sewer utilities from the Development Parcel to the Community Park site (the “Access Road Construction”); and

WHEREAS, the Developer has contributed and dedicated the Community Park site to the County, with an appraised value of One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00) as set forth in Exhibit “C” to the Park Agreement, and has received from the County an equivalent amount of parks impact fee credits; and

WHEREAS, the Developer has completed construction of a portion of a road, now known as Twin Creeks Drive, and related water and sewer utilities, the actual cost of which totals One Million Nine Hundred Sixty-Four Thousand Eight Hundred Ninety-Eight and 16/100 Dollars (\$1,964,898.16), the details of which are attached to this MOU as Exhibit “A” and incorporated herein by reference; and

WHEREAS, a good faith dispute has arisen between the County and the Developer as to whether the Developer’s construction of the portion of Twin Creeks Drive and related water and

sewer utilities constitutes the Access Road Construction required under the Park Agreement and whether the Developer is, therefore, is currently entitled to receive park impact fee credits in an amount equal to the actual costs of said construction; and

WHEREAS, the Parties wish to forever resolve their dispute and to set forth herein their common understanding and interpretation as to the Access Road Construction required under the Park Agreement, while recognizing the benefit to the Developer of the timely receipt of impact fee credits and the benefit to the County of the completion of the road construction; and

WHEREAS, entering into this MOU serves the interest of the County and resolves uncertainties in the best interest of the public and for a public purpose.

NOW THEREFORE, in consideration of the mutual obligations set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the County and the Developer agree as follows:

1. Incorporation of Recitals. The above recitals are true and correct and are adopted as findings of fact and incorporated into the body of this MOU.

2. Access Road Construction Impact Fee Credits. The Parties hereby acknowledge, understand and agree that One Million Nine Hundred Sixty-Four Thousand Eight Hundred Ninety-Eight and 16/100 Dollars (\$1,964,898.16) in park impact fee credits shall be awarded to the Developer for construction of the portion of road, now known as Twin Creeks Drive, and related water and sewer utilities, as set forth in Exhibit "A" hereto.

3. Field Improvements and Remaining Access Road Construction. The Developer hereby acknowledges, understands and agrees that it remains obligated under the Park Agreement to design, permit and construct the Field Improvements within the Community Park and to design, permit, bond and construct the remainder of the required Access Road Construction necessary for access to the Community Park, including a portion of the road now known as Trophy Lake Drive. The Developer further acknowledges, understands and agrees that it shall, in no event, be entitled to receive more than One Hundred Sixty-Five Thousand Five Hundred Fifty-Nine and 84/100 Dollars (\$165,559.84) in park impact fee credits for the Field Improvements and remaining Access Road Construction, regardless of their actual cost.

4. Maximum Amount of Park Impact Fee Credits. The Parties hereby reaffirm that the maximum amount of total park impact fee credits that shall be awarded to the Developer under the Park Agreement is and remains Three Million Two Hundred Thirty Thousand Four Hundred Fifty-Eight and No/100 Dollars (\$3,230,458.00). The Developer shall in no event request or be entitled to receive an increase in the maximum amount of park impact fees, regardless of the actual cost of any remaining improvements required under the Park Agreement or the development orders for the Twin Creeks Development of Regional Impact, as described and approved in St. Johns County Resolution No. 2015-240 (DRI MOD 2015-03) and Ordinance No. 2015-52 (MAJMOD 2015-04), as may be amended from time to time (collectively, the "Development Orders").

5. Road Impact Fees. The Parties hereby acknowledge, understand and agree that the Access Road Construction does not meet the requirements to receive road impact fee credits pursuant to St. Johns County Ordinance, Ord No. 87-57, as amended, and that the Developer shall

not request or be entitled to receive any road impact fee credits for the Access Road Construction, or any portion thereof.

6. Governing Law and Venue. This MOU is to be governed by and interpreted in accordance with the laws of the State of Florida without regard to choice of law. Venue for any action or administrative proceedings arising out of or pertaining to this MOU shall be in St. Johns County, Florida.

7. Relationship to Park Agreement, Development Order. Nothing in this MOU shall be deemed to constitute an amendment or modification to the Park Agreement or to the Development Orders. All terms, conditions, provisions, requirements, and commitments in the Parks Agreement and the Development Orders shall remain in full force and effect.

8. Entire Agreement. This MOU constitutes the entire agreement among the Parties and supersedes any prior understanding or agreement among them respecting the subject matter hereof. There are no representations, arrangements, understandings or agreements, oral or written, among the Parties hereto relating to the subject matter of this MOU except those fully expressed herein and each party agrees that it has not relied on and is not entitled to rely on any statements, promises or representations other than those set forth herein in entering into this MOU. This MOU may not be modified or amended except by the mutual written agreement of the Parties.

9. Waiver. The failure of either party to insist upon the strict performance or compliance with any provision of this MOU shall not constitute a waiver or relinquishment of such provision, and all such provisions shall remain in effect unless waived or relinquished in writing and signed by the party against whom the waiver is sought. Any such written waiver or relinquishment shall be applicable only to the specific instance to which it relates and shall not be deemed to be a continuing waiver or relinquishment or the waiver or relinquishment of any future matter.

10. Severability. If any word, phrase, sentence, part, subsection, section or other portion of this MOU, or any application thereof, to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this MOU, and all applications thereof, not having been declared void, unconstitutional, or invalid shall remain in full force, and effect, provided that the removal of the voided portion shall not deprive either party of the benefit of its bargain.

11. Negotiated Agreement. This MOU was negotiated and prepared by both Parties, with each party having had the opportunity to consult with counsel and advisers of their own choosing. The Parties have agreed to the text of this MOU, and none of the provisions hereof shall be construed against either party on the ground that such party is the author of this MOU or any part thereof.

12. Relationship of the Parties. The Parties agree that this MOU does not and shall not be construed as or constitute an agency, partnership, joint venture or other fiduciary or confidential relationship between Owners and the County.

13. Counterparts. This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same instrument.

14. Paragraph Headings. Paragraph headings in this MOU are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this MOU or any of its provisions.

15. No Third-Party Beneficiaries. Both the County and Developer explicitly agree that nothing in this MOU shall be construed to create any third-party beneficiary status to any person or entity.

16. Access to Records. The access to, disclosure, non-disclosure or exemption of records, data, documents and/or materials associated with this MOU shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes) and other applicable State or Federal law. Access to such public records may not be blocked, thwarted and/or hindered by placing the public records in the possession of a third party or an unaffiliated party.

17. Authority to Execute. Each party to this MOU covenants to the other party that it has the lawful authority to enter into this MOU and that it has authorized the execution of this MOU by the representative noted below.

18. Effective Date. This MOU shall be effective on the date of the last signature of the parties hereto.

[SIGNATURES APPEAR ON FOLLOWING PAGES.]

IN WITNESS WHEREOF, each of the parties hereto has executed this MOU as of the date and year set forth below.

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

By: _____
Jeremiah R. Blocker, Chair

Date: _____

ATTEST: Brandon J. Patty, Clerk of the Circuit Court & Comptroller

By: _____
Deputy Clerk

TWIN CREEKS DEVELOPMENT
ASSOCIATES, LLC, a Florida limited liability
company

By: _____

Print Name: _____

Title: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 2020, by _____, on behalf of Twin Creeks Development Associates, LLC, a Florida limited liability company, its _____, and who is personally known to me or has produced _____ as identification.

Notary Public
My Commission expires: _____

TWIN CREEKS VENTURES, LLC, a Florida
limited liability company

By: _____
Print Name: _____
Title: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence
or online notarization, this ___ day of _____, 2020, by _____,
on behalf of Twin Creeks Ventures, LLC, a Florida limited liability company, its
_____, and who is personally known to me or has produced
_____ as identification.

Notary Public
My Commission expires: _____

EXHIBIT "A"

Twin Creeks Drive Roadway Extension

Contract Summary

12/8/2020

Roadway		Amount
General Conditions/Mobilization/Survey/Testing	\$	103,038.41
Site Clearing	\$	183,094.59
Erosion Control & Stabilization	\$	184,493.64
Earthwork	\$	1,072,834.17
Roadway, Sidewalks	\$	491,449.12
Storm Water	\$	396,367.26
Potable Water	\$	148,677.54
Sanitary	\$	73,757.23
Re-use	\$	125,612.92
Elimination of Phase 2	\$	(927,989.82)
Wetlands Repair	\$	4,528.00
Change Order #1 - Misc Plan Changes	\$	47,996.89
Change Order #2 - Additional Pipe	\$	20,809.76
Change Order #3 - Additional FPL Conduit	\$	14,000.00
Change Order #4 - Additional Insurance	\$	12,703.04
Change Order #4 - Asphalt Cul de Sac	\$	13,525.38
Total - Twin Creeks Drive Extension & Related Utilities	\$	1,964,898.13