

IMPACT FEE CREDIT AGREEMENT

This Impact Fee Credit Agreement (“Agreement”), entered into this ____ day of _____, 2024, by and between LEE COUNTY, a political subdivision of the State of Florida (hereinafter, “County”), whose address for purposes of this Agreement is P.O. Box 398, Fort Myers, FL 33902-0398; and North Alico Property Owners Association, Inc., a Florida not for profit corporation (hereinafter, “North Alico”), whose address for purposes of this Agreement is 28120 Hunters Ridge Blvd., Ste. 5, Bonita Springs, FL 34135; County and North Alico being collectively referred to herein as the “Parties.”

WHEREAS, the County previously determined the need for a future Class 1 arterial roadway improvement, known generally and referred to herein as the Three Oaks Parkway Extension, which County proposed to extend from Alico Road to Daniels Parkway to extend a north/ south arterial road parallel to and west of I-75 as a necessary arterial road carrying traffic in the Collier County to Lee County urban corridor; and

WHEREAS, County had incorporated the plan for the Three Oaks Parkway Extension into the five year plan for the Metropolitan Planning Organization and included the roadway in the County five year funding plan for roadway improvements; and

WHEREAS, the County approved the extension of Three Oaks Parkway, currently constructed and in service as a 20 mile long multi lane arterial roadway beginning on the south at Radio Road in Collier County and extending northward to Alico Road in Lee County, in order to extend this urban road corridor to the central part of Lee County from Alico Road to Daniels Parkway (the “Three Oaks Parkway Extension”); and

WHEREAS, the County has provided all public notice and taken all public input from adjacent owners and has determined and adopted the alignment of Three Oaks Parkway Extension north of Alico Road to Daniels Parkway in accordance with this public input; and

WHEREAS, the County has provided for essential utilities to the north and to the south of the Three Oaks Parkway Extension so as to interconnect and to provide water and sewer service to the expanding infill population to be served along this corridor; and

WHEREAS, the County accepted the public right of way for Three Oaks Parkway Extension from Alico Road north to the Fiddlesticks Canal in the location of the permitted alignment in order to accelerate construction of this essential road project to improve traffic circulation, provide alternate access for fire and public safety purposes, and to facilitate evacuation in the case of hurricanes or emergencies; and

WHEREAS, North Alico applied to County for authorization to proceed to accelerate the design and construction of Three Oaks Parkway from Alico Road north to the Fiddlesticks Canal and also to extend Oriole Road (a major collector road) from Alico Road north to the intersection with Three Oaks Parkway Extension by having North Alico provide financing and prepaying the costs to permit and construct the extension of these roadway improvements, including related environmental mitigation required by the permits from various Federal, State, and local agencies (“Roadway Improvements”) in exchange for Road Impact Fee Credits; and

WHEREAS, North Alico applied for the roadway, environmental, drainage, surface water management, and utility permits from the various Federal, State, and Local governmental authorities to extend Three Oaks Parkway from Alico Road north to the Fiddlesticks Canal and also to extend Oriole Road (a major collector road) from Alico Road north to the intersection with Three Oaks Parkway Extension and North Alico secured those permits in accordance with engineering plans reviewed and approved by County; and

WHEREAS, North Alico hired transportation design engineers, surveyors, environmental consultants, and other appropriate professionals to design the Roadway Improvements and secure the applicable permits for construction of the Roadway and related improvements; and

WHEREAS, North Alico applied to County for Development Orders for the Roadway Improvements and received those Development Orders from the County to proceed with construction of the Roadway Improvements; and

WHEREAS, North Alico hired contractors to construct the Roadway Improvements under County Inspection and North Alico completed construction of the Roadway Improvements and the County has issued Certificates of Completion for the Roadway Improvements, including construction of the roadways, drainage improvements for stormwater runoff, mitigation obligations, and utility improvements to extend Three Oaks Parkway from Alico Road north to the Fiddlesticks Canal and also to extend Oriole Road (a major collector road) from Alico Road north to the intersection with Three Oaks Parkway Extension and North Alico has completed all warranty work required by the County for acceptance of these Roadway Improvements.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and benefits contained in this Agreement, the sufficiency of which is acknowledged by the Parties, the County and North Alico do hereby agree as follows:

1. **Recitals:** The Parties acknowledge that the above recitals are true and correct and do hereby incorporate those recitals into this Agreement by reference.
2. **Grant of Road Impact Fees:** County and North Alico have agreed on the limits of Construction consisting of approximately 6,000 lineal feet of Three Oaks Parkway extension north of Alico Road to the Fiddlesticks canal (a four lane divided arterial Class 1 road) and also consisting of approximately 6,000 lineal feet of Oriole Road extension (a major collector road) north of Alico Road which intersects with Three Oaks Parkway (as shown on **Exhibit "A"** attached hereto and incorporated herein by reference) with the understanding that upon completion and acceptance that North Alico or its assigns would receive Road Impact Fee Credits for the eligible construction and related costs.

North Alico has completed construction of the Roadway Improvements and conveyed the completed projects to the County, which has inspected, certified completion, and accepted the roadways for service and maintenance pursuant to County codes and regulations. North Alico has applied to County for Road Impact Fee Credits for the applicable costs of permitting, professional fees, road costs, and related drainage, mitigation, and other project related costs, all according to the Lee County Road Impact Fee requirements and in compliance with Lee County Administrative Code Sections AC 11-5 and AC 11-7.

North Alico has presented County with the detailed breakdown of costs for Three Oaks Parkway Extension and County has reviewed and accepted the cost breakdown of eligible costs in the amount of \$6,413,531.05 as provided in **Exhibit "B"** attached hereto.

North Alico has presented County with a detailed cost breakdown of costs for Oriole Road Extension and County has reviewed and accepted the cost breakdown of eligible costs in the amount of \$1,387,640.85 as provided in **Exhibit "C"** attached hereto.

County has agreed to issue Road Impact Fee Credits for the Eligible Costs as shown on Exhibit B" and Exhibit "C" to North Alico or its designees (as documented in compliance with Lee County Development Code (LDC) Section 2-275 and AC 11-5) within thirty (30) days of approval of this Agreement by the Board of County Commissioners in accordance with the procedures for granting road impact fees for road improvements adopted in Lee County, Florida in accordance with LDC Section 2-275. Credits may be used in the Southwest, Southeast, and Central Road Impact Fee Benefit Districts as established in Appendix K of the LDC.

County has agreed, as part of the permitting and approval process for the Three Oaks Parkway Extension, to provide access to Three Oaks Parkway Extension at the locations shown on **Exhibit "D"**, which access shall include full turning movements and potential signalization as provided herein and which access may be used for ingress and egress for the adjacent development when development is approved for the adjacent properties. North Alico has provided construction of the turn lane improvements at the intersections shown on Exhibit "D", as more particularly located and stationed in the Development Order plans and the certified As Built Drawings provided to and accepted by County, pursuant to the approved Roadway Improvement plans at the cost of North Alico as site related improvements not eligible for Road Impact Fee Credits.

3. Post-Closing Obligations of the Parties. Upon completion of the approval and issuance of Road Impact Fee Credits to North Alico by the County, the Parties will undertake the following obligations and commitments. These obligations and commitments shall expressly survive the issuance of the Credits and are an integral part of the consideration for this Agreement.

(A) The County will continue to recognize the agreement regarding access to the adjacent properties as shown on Exhibit "D" attached hereto and the roadway plans as constructed for Three Oaks Parkway Extension, including access to the turn lane improvements, as constructed. County recognizes that these turn lane improvements are designed to provide primary access to the adjacent development that will occur on the adjacent Property.

In the event the County determines that there is a traffic safety issue regarding the median openings identified in this Agreement after the execution and adoption of this Agreement, and the County desires to make a change to the configuration of the median openings, then the County shall notify the adjacent owners and the public of its intention to modify the configuration of the median openings before implementation of the median location or configuration changes. If signalization is a design alternative solution to the safety issue

then the effected property owners may discuss signalization of an agreed upon median location, the process for approval, and the allocation of cost to those property owners effected. The County may modify the median(s) in the interim condition to address the demonstrated safety issue until a signal could be constructed by the effected property owners. In the event the County proposes a change to the Controlled Access median openings in Three Oaks Parkway then the County will adopt any changes in accordance with the provisions of County Administrative Code Section AC 11-10, as this Section may be amended, from time to time.

(B) In the event that road impact fees are repealed, rescinded, invalidated, or replaced with an alternative form of transportation mitigation fee or otherwise, the obligation of the County to compensate North Alico for the value of the Three Oaks Parkway extension and Oriole Road extension Roadway Improvements shall continue in the form of alternative transportation credits or in the absence of such credits, in the form of a cash payment within 90 days of the repeal, rescission, invalidation, or replacement of road impact fees; it being the intent of this subparagraph that North Alico continue to be compensated in an amount equivalent to the Credits on a dollar-for-dollar basis.

4. **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested to the following addresses, or to such other person or address as any Party may designate from time to time in writing:

If to North Alico: North Alico Property Owners Association, Inc.
28120 Hunters Ridge Blvd., Ste. 5
Bonita Springs, FL 34135
Attn: Alan C. Freeman

with a copy to: Paul H. Freeman, Esquire
2455 East Sunrise Blvd., Ste. 507
Fort Lauderdale, FL 33304

If to Lee County: Lee County
2115 Second Street
Fort Myers, FL 33901
Attn: County Manager

with a copy to: Lee County
2115 Second Street
Fort Myers, FL 33901
Attn: Lee County Attorney

5. **Remedies.** Any material breach of this Agreement may be enforced by either Party as against the other by appropriate action in law or equity filed in a court of competent jurisdiction; provided, however, no such action may be brought until the defaulting Party has been given

notice and ninety (90) days in which to cure the default. If the default cannot reasonably be cured within the ninety (90) day period, such period shall be extended if the cure is commenced within such ninety (90) days and the defaulting Party is proceeding with due diligence for such period of time reasonably required to complete such cure.

6. **Governing Law.** This Agreement shall be construed and interpreted according to the laws of the State of Florida, and venue with respect to any litigation between the Parties related to this Agreement shall be exclusively in Lee County, Florida.

7. **Severability.** If any part, term, or provision of this Agreement is held to be illegal, void, or unenforceable, the remaining portions or provisions of this Agreement shall not be affected or impaired, each remaining provision shall remain in full force and effect, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

8. **Entire Agreement.** This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements between the Parties, either verbal or written, regarding the subject matter of this Agreement.

9. **Attorneys' Fees.** In the event any litigation arises in connection with this Agreement, the prevailing party in any such litigation shall be entitled to recover its reasonable attorneys' fees, at trial and on appeal, and all costs of the action from the non-prevailing party.

10. **Covenants; Successors and Assigns.** The obligations imposed and entitlements created pursuant to this Agreement shall be binding upon and enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns.

11. **Effective Date.** This Agreement will become effective upon full execution by both Parties.

12. **Recording of Agreement.** This Agreement will be recorded by North Alico in the Public Records of Lee County within fourteen (14) days of the Effective Date.

13. **Construction.** The Parties hereby acknowledge that this Agreement was negotiated at arm's length, with each Party being represented by counsel of their choosing and with an equal opportunity for determining the final draft of this Agreement. Accordingly, the Agreement will not be construed more favorably for one Party as against the other Party by virtue of which Party prepared the original draft of this Agreement or any changes thereto.

14. **WAIVER OF TRIAL BY JURY.** THE PARTIES HERETO HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS AGREEMENT OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

(Signatures Begin on Next Page)

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year written below.

North Alico Property Owners Association, Inc.
a Florida not for profit corporation

Witness #1

Print/Type Name of Witness #1

Address

City, State

Witness #2

Print/Type Name of Witness #2

Address

City/ State

By: _____

Print Name:

Title:

Date: _____

Date: _____

State of Florida

County of Lee

The foregoing instrument was acknowledged before this _____ day of _____, 2024 by _____, as _____ of North Alico Property Owners Association, Inc., a Florida not for profit corporation, on behalf of the company, who [] is personally known or [] has produced _____ as identification.

[Notary Seal]

Notary Public

Printed Name: _____

My Commission

Expires: _____

Accepted this _____ day of _____, 2024.

ATTEST:
KARNES, CLERK

Lee County, Florida, by its Board of KEVIN
County Commissioners

By: _____
Deputy Clerk

By: _____
Print Name: _____
Its: Chairman or Vice-Chairman

Approved as to Form for the
Reliance of Lee County Only

By: _____
Office of the County Attorney

**List of Exhibits
[to be provided]**

Exhibit "A": Roadway Construction Limits- Drawing showing Three Oaks Parkway Extension from Alico Road north to the Fiddlesticks Canal and showing Oriole Road Extension from Alico Road north to the Three Oaks Parkway Extension

Exhibit "B": Three Oaks Parkway Schedule of Costs Eligible for Road Impact Fee Credits

Exhibit "C": Oriole Road Schedule of Costs Eligible for Road Impact Fee Credits

Exhibit "D": Access Locations and Turn Lanes- Drawing showing access points and turn lanes as shown on the approved Roadway Plans