IMPACT FEE CREDIT AGREEMENT
FOR PROPORTIONATE SHARE CONTRIBUTIONS
FOR DEVELOPMENT OF COUNTY ROAD 470

THIS AGREEMENT ("Agreement") is made and entered into this 27 day of Sept, 2011, by and between **LANDSTONE-WRIGHT, LLC,** a Delaware limited liability company, doing business at 12011 San Vicente Blvd., Suite 350, Los Angeles, California 90049 (hereinafter called "Owner/Developer/Owner"). **TML OF MARION, LLC,** a Florida limited liability company, f/k/a Tony Mendola, LLC, a Florida limited liability company, with a mailing address of P.O. Box 3988, Ocala, FL 34478 (hereinafter called "TML"), and **SUMTER COUNTY**, a political subdivision of the State of Florida, whose address is 7375 Powell Road, Wildwood, FL 34785 (hereinafter called "County").

RECITALS

WHEREAS, the Owner/Developer and TML are the owners of the Landstone Communities Development of Regional Impact ("DRI") located in the City of Wildwood, Florida (the "City"), as further described by the Development Order for the DRI approved by the City in October 2007, and the Amended and Restated Development Order ("ARDO") for the DRI approved by the City on December 13, 2010, (collectively, the "Development Order"); and

WHEREAS, pursuant to the Development Order, the Owner/Developer, the County, the City, Lake County, and the Florida Department of Transportation ("FDOT") entered into the Landstone Communities Development of Regional Impact Transportation Proportionate Share Agreement for County Road 470 ("Proportionate Share Agreement"), which sets forth the terms and conditions for the design and construction of improvements to County Road 470 ("CR 470") with the cost to be funded by the Owner/Developer, which is incorporated herein by reference; and

WHEREAS, the Proportionate Share Agreement sets forth the timing and extent of contributions to be made by the Owner/Developer toward the improvement of affected transportation facilities, including the improvement of CR 470 from County Road 501 to the Sumter/Lake County line (the "CR 470 Improvements", as such term is defined in the Proportionate Share Agreement); and

WHEREAS, Section 12 of the Proportionate Share Agreement also sets forth Owner/Developer's entitlement to impact fee credits for such contributions, pursuant to Section 380.06(16), Fla. Stat.; and

WHEREAS, it is the intent and understanding of the parties that road impact fee credits or reimbursements shall be sufficient to cover eligible transportation proportionate share costs for the DRI; and

WHEREAS, the County finds that Owner/Developer is entitled to receive impact fee credits and/or cash reimbursement for such contributions and that such contributions are consistent with the County's Comprehensive Plan, are an integral part of and a reasonably necessary accommodation of contemplated Off-Site Improvements to Designated County Roads and excludes Access Improvements, as those terms are defined in Article III of the County's Land Development Code, and the proposed funding and/or construction time schedule is consistent with the County's transportation work schedule; and

WHEREAS, the parties desire to enter into this Agreement to set forth their duties and obligations for such contributions, and the impact fee credits and/or reimbursement to which the Owner/Developer will be entitled.

NOW THEREFORE, accepting the above recitals as true and incorporating them as if stated herein, and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, receipt of which is acknowledged by both parties and the mutual terms, covenants and conditions to be complied with on the part of the parties hereto, the parties do hereby agree as follows:

1. **INCORPORATION OF RECITALS.** The foregoing recitals are true and correct and are hereby incorporated by the parties as part of this Agreement as if fully set forth herein.

2. **IMPACT FEE CREDIT AND REIMBURSEMENT**

A. **Dedication of Right Of Way.**

(i) *Property Owned by the Owner/Developer.* Owner/Developer agrees to convey to the County the right-of-way currently (i.e., as of the date of this Agreement) owned by the Owner/Developer or City of Wildwood and required for the improvement of CR 470, as that term is defined in the Proportionate Share Agreement, without impact fee credit.

(ii) *Additional Right-of-Way to be Acquired.* To the extent that additional right-of-way is required for construction of the CR 470 Improvements beyond the land described in Section 2.A.(i) above, the County shall be responsible for acquiring such right-of-way, within the jurisdiction of the County. The Owner/Developer shall have no obligations hereunder until all right-of-way necessary for the CR 470 Improvements has been acquired.

B. **Reimbursement for the CR 470 Improvements.**

(i) *Amount of Reimbursement.* The County agrees that the Owner/Developer shall be entitled to reimbursement in the form of impact fee credits and/or cash as set forth herein based upon the actual cost of designing, permitting and constructing the CR 470 Improvements and any related costs, including, but not limited to, utilities relocation, purchase and installation of traffic signals, construction management and inspection, surveying, soils and material testing, and soil remediation costs; however, in no event shall the Owner/Developer be entitled to any credit and/or reimbursement in excess of 120% of the estimated costs set forth in ***Exhibit "A,"*** unless and to the extent the Project is competitively bid, in which case the Owner/Developer shall be entitled to impact fee credit and/or reimbursement

in the amount of the actual cost of constructing the Project. The parties agree that Exhibit "A" excludes costs to acquire additional right-of-way, relocate utilities, remediate contaminated soils, and other unknown costs that may be necessary to complete construction of the CR 470 Improvements, and that Owner/Developer shall be reimbursed based on the actual value of such costs incurred by Owner/Developer, if any, regardless of Exhibit "A." It is further agreed that Owner/Developer shall not be entitled to reimbursement/credit in excess of the amount of road impact fees to be generated over the life of the DRI; provided, however, in the event there is a decrease, termination or moratorium on road impact fee rates after the effective date of this Agreement, then Owner/Developer shall be entitled to either, at Owner/Developer's option, cash reimbursement or impact fee credits up to the amount of impact fees that would have been collected over the life of the DRI in the absence of such decrease, termination or moratorium.

(ii) *Method of Reimbursement*. All road impact fees in the County's impact fee trust account shall be available for cash reimbursement to Owner/Developer in accordance with this Agreement. Except as otherwise provided in Section 2.B.(i.) above, the Owner/Developer shall be reimbursed by the County based upon the percentage of the CR 470 Improvements' work completed by Owner/Developer or Owner/Developer's contractor by delivering to the County a certification by the Owner/Developer's engineer indicating the percentage of work completed through the date of certification, which reimbursement shall be available to the Owner/Developer upon inspection, approval and acceptance of such certification by the County (not to be unreasonably withheld, conditioned or delayed). The Owner/Developer shall have the option of being reimbursed in impact fee credits to the extent that insufficient cash is available to reimburse Owner/Developer in full at the time such application is made, or Owner/Developer may choose to be reimbursed in cash when it becomes available. The amount of reimbursement owing to Owner/Developer shall be based upon the value of the CR 470 Improvements in accordance with the above. The Owner/Developer shall pay road impact fees pursuant to County ordinance except and to the extent that Owner/Developer is entitled to impact fee credits and Owner/Developer elects to utilize such credits. Impact fee credits made available to the Owner/Developer shall be fully transferable and assignable by Owner/Developer in accordance with this Agreement. The Owner/Developer shall keep records which concern or reflect the total cost of the CR 470 Improvements. This information will be available to the County, or its duly authorized agent or representative, for audit, inspection or copying, for a minimum of five (5) years from the termination of this Agreement. If a surety bond, letter of credit or cash is posted by the Owner/Developer pursuant to the Proportionate Share Agreement and the County uses the proceeds of the surety bond, letter of credit or cash to construct the CR 470 Improvements, then the Owner/Developer shall be entitled to road impact fee credits or reimbursements as described above. However, it is not the County's intent to utilize the proceeds of the surety bond, letter of credit or cash for construction but used simply as a financial guarantee of completion of the CR 470 Improvements by the Owner/Developer.

C. **Assignment of Impact Fee Credits by the Owner/Developer**. Any impact fee credits granted to Owner/Developer shall be freely assignable by the Owner/Developer, its successors and/or assigns, without limitation on the number of such credits that may be assigned and transferred from one entity to the next or the number of times such credits may be transferred. Any such assignment of impact fee credits shall be evidenced in writing and signed by the Assignee or holder of the impact fee credits and a copy of such assignment shall be provided to the County.

D. **Annual Review and Audit**. The County shall conduct an annual review and audit of performance under this Agreement to determine whether or not there has been demonstrated good faith compliance with the terms of this Agreement and to report the credit applied toward payment of road impact fees and the balance of available and unused credit. If the Board finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of this Agreement, this Agreement may be revoked or modified by the County. Prior to taking any such action, the County agrees to give the Owner/Developer written notice with reasonable time in which to cure any alleged failure.

3. **COMMUNITY DEVELOPMENT DISTRICT.** Any or all of Owner/Developer's funding and/or construction-related obligations set forth in this Agreement may be performed by a community development district created for the DRI pursuant to Chapter 190, Fla. Stat. In addition, and without limiting the foregoing, the Owner/Developer may perform any financial and/or construction-related obligation herein and be reimbursed by a community development district created for the DRI pursuant to Chapter 190, Florida Statutes. To the extent that any such contribution or construction-related activity is paid for by or (in the case of advancing impact fee credits) is secured by a community development district, then impact fee credits and/or reimbursement, as applicable, shall be granted in the name of such community development district and shall be subject to the same terms and conditions set forth herein as if they were granted to Owner/Developer.

4. **FUTURE ESTABLISHMENT OF MUNICIPAL SERVICE TAXING UNIT OR MUNICIPAL SERVICE BENEFIT UNIT.** If at the request of the City of Wildwood ("City") a Municipal Service Taxing Unit (MSTU) or Municipal Service Benefit Unit (MSBU), pursuant to Florida Statutes and the Interlocal Service Boundary Agreement, dated April 29, 2009, as amended, ("ISBA") between the City and County, is established to fund the CR 470 Improvements, then the Owner/Developer may enter into a separate agreement with the City, at the City's full discretion and option, to obtain reimbursement for expenses related to the CR 470 Improvements not reimbursed or credited through this Agreement.

5. **NOTICES.** Any notice or demand that must or may be given or made in connection with this Agreement must be in writing and delivered by personal delivery or mailed by certified or registered mail, return receipt requested, and addressed to the parties as follows:

COUNTY:
Sumter County
Attn: Bradley Arnold,
County Administrator
7375 Powell Road
Wildwood, FL 34785

Copy to:
George Angeliadis, Esq.
The Hogan Law Firm
Post Office Box 485
Brooksville, Florida 34605

OWNER/DEVELOPER:
Landstone-Wright, LLC
Attn: Albert Z. Praw
12011 San Vicente Blvd., Suite 350
Los Angeles, CA 90049

Copy to:
Cecelia Bonifay, Esq.
Akerman Senterfitt
420 South Orange Avenue, 12th Floor
Orlando, FL 32801

TML:
TML of Marion, LLC
Tony Mendola, LLC
Attn: Albert Peek
PO Box 3988
Ocala, FL 34478

Copy to:
Hearthstone
Hearthstone
Attn: Tracy Carver, Esq.
General Counsel
300 Drake's Landing Rd, Suite 269
Greenbrae, CA 94904

Copy to:
W. James Gooding III, Esq.
Gilligan, King, Gooding & Gifford, P.A.
1531 SE 36th Ave.
Ocala, FL 34471

Such addresses may be changed by notice pursuant to this paragraph, but notice of change of addresses is effective only upon receipt.

6. **Concurrency and Related Fees**. In the event the County adopts a transportation concurrency fee, a "mobility fee," or an equivalent transportation fee, in lieu of, or in addition to, road impact fees, Owner/Developer shall be entitled to receive credits against, and reimbursement from, such fee to the same extent as it is entitled to such credits against, or reimbursement from, road impact fees.

7. **Successors**. This Agreement shall bind and inure to the benefit of the parties, their successors in interest and assigns. Other than the ARDO and the Proportionate Share Agreement, no prior or present agreements or representations shall be binding on the parties hereto unless included in this Agreement. No subsequent agreement shall be valid or binding upon the parties unless in writing and executed by the party immediately bound by it. In any litigation arising out of this Agreement, each party shall be responsible for its attorney's fees and costs.

8. **Force Majeure**. In the event that the performance of this Agreement by either party is prevented or interrupted in consequence of any cause beyond the control of either party, including but not limited to Acts of God or of the public enemy, war, national emergency, allocation or of other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, sinkhole or other casualty or disaster, governmental rules or acts or orders or restrictions or regulations or requirements, acts or action of any government or public or governmental authority or commission or board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation or rule or ruling or order, order or decree or judgment or restraining order or injunction of any court, then such party shall not be liable for damages to the other party as a result of such non-performance. Notwithstanding the above, both parties agree to take no action that would prevent the intended operation of this Agreement.

9. **Amendment**. This Agreement may be amended by mutual written agreement of the parties where such amendment is duly executed with the same formalities as this Agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day and year above first written.

ATTEST:

Gloria Hayward, Clerk of the Court

BOARD OF COUNTY COMMISSIONERS SUMTER COUNTY, FLORIDA

Don Burgess, Chairman

Approved as to Form
and Legal Sufficiency

Sumter County Attorney

ATTEST:

By: _____

By: _____

LANDSTONE-WRIGHT, LLC, a Delaware limited liability company

By: Hearthstone Path of Growth Fund LLC, a Delaware limited liability company, Member

By: Hearthstone Professionals XII, LP, a California limited partnership, Managing Member

By: Hearthstone, Inc., a California corporation, General Partner

By: _____
Charles Schetter, President

By: Landstone Communities, LLC, a Delaware limited liability company, Member

By: _____
Albert Z. Praw, Chief Executive Officer

ATTEST:

By: _____

TML OF MARION, LLC, a Florida limited liability company

By: _____
Name: Manager ALBERT Deck
As Its: Manager

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day and year above first written.

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and Legal Sufficiency

Sumter County Attorney

BOARD OF COUNTY COMMISSIONERS
SUMTER COUNTY, FLORIDA

Don Burgess, Chairman

ATTEST:

By: _____

By: _____

LANDSTONE-WRIGHT, LLC, a Delaware limited liability company

By: Hearthstone Path of Growth Fund LLC, a Delaware limited liability company, Member

By: Hearthstone Professionals XII, LP, a California limited partnership, Managing Member

By: Hearthstone, Inc., a California corporation, General Partner

By: _____
Charles Schetter, President

By: Landstone Communities, LLC, a Delaware limited liability company, Member

By: _____
Albert Z. Praw, Chief Executive Officer

EXHIBIT "A"

Roadway	Segment	Improvement
C-470	CR 501 to County Line	Widen to 4 lanes
Construction	$13,692,171	
Engineering	$ 2,053,826	
CEI	$ 1,369,217	
Wetland	$ 21,451	
Total Cost	**$17,136,665**	

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Douglas, Jessica

From: Arnold, Bradley
Sent: Thursday, November 17, 2011 9:19 AM
To: Douglas, Jessica
Subject: FW: Discrepancy in Landstone RIFCA

Importance: High

-----Original Message-----
From: Cornelius, Brad
Sent: Wednesday, November 16, 2011 3:24 PM
To: chuckpiper@cfl.rr.com
Cc: Arnold, Bradley; Webb, Aimee
Subject: Discrepancy in Landstone RIFCA
Importance: High

Chuck,

This is a follow up to our phone conversation.

Mr. Arnold and I noticed a discrepancy in the Landstone RIFCA related to ROW. As you acknowledged in our phone conversation, Landstone will not receive impact fee credits for the value of the ROW. Section 2.A.i of the RIFCA clearly states that fact. The discrepancy comes in with Exhibit "A". Exhibit "A" shows the value of the potential credit. However, Exhibit "A" inadvertently includes $2 million for ROW. Consistent with Section 2.A.i of the RIFCA, the total value should be $17 million and not $19 million.

My recommendation is that we prepare a short and simple amendment to the RIFCA that simply updates Exhibit "A" to eliminate the ROW costs. This will be sure to avoid any future confusion.

I can prepare the amendment for the Board's consideration on 12/13/11.

Let me know how you wish to proceed.

Take care,

Brad Cornelius, AICP, CPM, LEED Green Assoc.
Director, Planning & Development
352.689.4460