

RESOLUTION NO. 2020- 293

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, AND REQUIREMENTS OF AN AGREEMENT FOR LANDSCAPE MAINTENANCE OF CERTAIN COUNTY ROAD RIGHTS-OF-WAY BETWEEN ST. JOHNS COUNTY, FLORIDA (COUNTY) AND SILVERLEAF MASTER OWNER'S ASSOCIATION INC. (ASSOCIATION); AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY.**

**WHEREAS**, White's Ford Timber, LLC ("White's Ford") is the owner of a mixed use development known as the Silverleaf Development of Regional Impact ("Silverleaf"); and

**WHEREAS**, the Association is a property owner's association that is responsible for the operation and maintenance of stormwater ponds and other common areas within Silverleaf under the Declaration of Covenants and Restrictions for the Association; and

**WHEREAS**, portions of the rights-of-way commonly referred to as St. Johns Parkway and Silverleaf Parkway (the "Rights-of-Way") have been dedicated to the County by White's Ford; and

**WHEREAS**, White's Ford has completed construction of the Rights-of-Way, including the installation of landscaping, trees, grass, and other plantings, and irrigation within the Rights-of-Way in accordance with permits approved by the County; and

**WHEREAS**, the County and the District desire to establish and set forth in an agreement, attached hereto as Exhibit A and incorporated herein by reference, their respective maintenance responsibilities regarding the landscaping within the Rights-of-Way; and

**WHEREAS**, the County has determined that entering into this agreement is in the interest of the County and the public.

**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. The Board of County Commissioners of St. Johns County, Florida hereby approves the terms, provisions, and conditions of the Agreement for Landscape Maintenance of Certain County Road Rights-of-Way between St. Johns County, Florida and Silverleaf Master Owner's Association Inc., and authorizes the County Administrator, or designee, 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 and/or omissions that do not change the tone, tenor, or content of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, State of Florida, this 4th day of August, 2020.

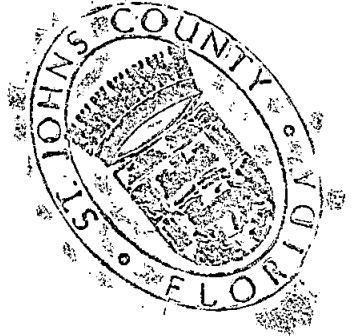
**BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA**

By: Jeb S. Smith  
Jeb S. Smith, Chair

ATTEST: Brandon Patty, Clerk

By: Pam Halterman  
Deputy Clerk

RENDITION DATE 8/6/20



**AGREEMENT FOR LANDSCAPE**  
**MAINTENANCE OF CERTAIN COUNTY ROAD RIGHTS-OF-WAY**

**THIS AGREEMENT** ("Agreement") is entered into by and between ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida (the "County") and SILVERLEAF MASTER OWNER'S ASSOCIATION INC., a Florida not-for-profit corporation (the "Association" and, together with the County, the "Parties").

**WITNESSETH:**

**WHEREAS**, White's Ford Timber, LLC ("White's Ford") is the owner of a mixed use development known as the Silverleaf Development of Regional Impact ("Silverleaf"); and

**WHEREAS**, the Association is a property owner's association that is responsible for the operation and maintenance of stormwater ponds and other common areas within Silverleaf under the Declaration of Covenants and Restrictions for Silverleaf Master recorded in Official Records Book 4743 beginning at Page 1063 of the Public Records of St. Johns County, Florida, as amended by documents recorded in Official Records Book 4755 beginning at Page 1180; Official Records Book 4813 beginning at Page 65; and Official Records Book 4847 beginning at Page 1270; and

**WHEREAS**, portions of the rights-of-way commonly referred to St. Johns Parkway and Silverleaf Parkway (the "Rights-of-Way"), as depicted on the plat recorded in Map Book 97, beginning at Page 23 of the Public Records of St. Johns County, Florida (the "Plat"), have been dedicated to the County by White's Ford; and

**WHEREAS**, White's Ford has completed construction of the Rights-of-Way as shown on the Plat, including the installation of landscaping, trees, grass, and other plantings, and irrigation within the Rights-of-Way in order to enhance the aesthetic appearance and value of Silverleaf in accordance with permits approved by the County (the "Landscaping and Irrigation"); and

**WHEREAS**, the County and the Association agree that it is the intent of the Parties that the County be responsible for maintaining the grass within the Rights-of-Way for the benefit of the public and that the Association be responsible for maintaining the remaining Landscaping and Irrigation within the Rights-of-Way, including landscaping, trees, other plantings, and irrigation, for the benefit of Silverleaf; and

**WHEREAS**, the Association further wishes to have the right to maintain the grass within the Rights-of-Way for the benefit of Silverleaf; and

**WHEREAS**, the County does not object to the Association supplementing at its own expense the County's maintenance of the grass within the Rights-of-Way including, but not limited to additional mowing and edging during high growth periods, after acceptance by the County and subject to the terms and conditions set forth in this Agreement; and

**WHEREAS**, the County has determined that entering into this Agreement is in the interest of the County and the public.

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the Association agree as follows:

**SECTION 1. RECITALS**

The foregoing recitals are true and correct and by this reference are incorporated into and form a material part of this Agreement.

**SECTION 2. LANDSCAPING AND IRRIGATION MAINTENANCE RESPONSIBILITIES**

The County shall be responsible for the cost and maintenance of the grass within the Rights-of-Way, including mowing and edging. The Association shall be responsible for the cost and maintenance of all other Landscaping and Irrigation within the Rights-of-Way, including landscaping, trees, other plantings, and irrigation. At all times, the Association shall perform such maintenance, including any supplemental maintenance performed pursuant to Section 3, below, with reasonable care and in a good and workmanlike manner that complies with County and State of Florida ordinances, rules, and laws, including, but not limited to keeping, trimming, and maintaining such Landscaping and Irrigation so as not to interfere with the use of the facility by the public or to cause or constitute a safety hazard.

**SECTION 3. SUPPLEMENTAL LANDSCAPE MAINTENANCE BY THE ASSOCIATION**

The County and the Association agree that the Association shall have the right to inspect, monitor, repair, and replace Landscaping and Irrigation within the Rights-of-Way. The Association may, but shall have no obligation to, supplement at its own expense the County's maintenance of the grass within the Rights-of-Way including, but not limited to, additional mowing and edging during high growth periods.

**SECTION 4. RIGHT-OF-WAY UTILIZATION PERMIT**

Prior to the date first set forth herein above and in accordance with permits previously approved by the County, the County has permitted White's Ford and/or the Association to install, construct, and maintain Landscaping and Irrigation within the Rights-of-Way that are the subject of the terms of this Agreement. However, in order to install or construct any additional Landscaping and Irrigation within the Rights-of-Way subsequent to the date of this Agreement and that are not in accordance with permits that have been previously approved by the County, the Association shall be required to obtain from the County a right-of-way utilization permit, if applicable, or other written authorization prior to the Association actually installing or constructing such additional Landscaping and Irrigation. Any such permitted or authorized additional Landscaping and Irrigation shall, upon installation and construction, automatically be deemed to be subject to the terms of this Agreement.

**SECTION 5. REMOVAL AND RELOCATION OF LANDSCAPING AND IRRIGATION**

Landscaping and Irrigation within the Rights-of-Way has been, installed, constructed, and maintained in such a manner as will not interfere with the use of the facility by the public or create a safety hazard on such facility. If, as solely determined by the County in its reasonable discretion, any component of Landscaping and Irrigation within the Rights-of-Way interferes with the use of the roadway by the public or creates a safety hazard, then the Association, at its sole expense, shall be responsible for correcting the interference or safety hazard, which action may include, but not be limited to, removing or relocating such Landscaping and Irrigation in such a manner so as to eliminate the interference or safety hazard, to the reasonable satisfaction of the County. If, at any time, as solely determined by the County in its reasonable discretion, any component of Landscaping and Irrigation requires immediate maintenance for the benefit of the public health, safety, or welfare, the County may perform such maintenance as it deems appropriate under the circumstances, including, but not limited to, removing or relocating such Landscaping and Irrigation. The County shall be reimbursed by the Association for the costs and expenses of any such immediate maintenance.

**SECTION 6. NO ADDITIONAL OBLIGATION OF ASSOCIATION CREATED; PERMISSIVE USE ONLY**

The Parties agree that nothing in this Agreement shall be interpreted to impose any additional obligation for the Association to maintain any roadway or associated improvements constructed within the Rights-of-Way, including but not limited to the road sub-grade, base layer, asphalt, striping, signage, gutters and curbing, fencing and retaining walls adjacent to wetland areas, and sidewalks, as well as maintaining proper drainage within the Rights-of-Way and all other aspects of the Rights-of-Way, except for Landscaping and Irrigation; provided however, hardscaping and signage previously installed within the Rights-of-Way by the Association shall remain the operation, maintenance, and replacement responsibility of the Association.

The Parties further expressly understand and agree that this Agreement is for permissive use only and that nothing in the execution, operation, effect, or performance of this Agreement, nor the maintenance of the Rights-of-Way by the Association or any other work performed by the Association upon County property pursuant to this Agreement, shall in anyway operate to create, transfer, convey, or vest any right, title, interest, or estate to the Association in the Rights-of-Way or other County property.

**SECTION 7. TERM**

The provisions, restrictions, and covenants of this Agreement shall touch and concern the land and shall be a covenant running with and binding the fee interest underlying the Rights-of-Way, whether in existence on the date hereof or constructed in the future, for a period of thirty (30) years from the date this Agreement is made effective. No agreement to extend the term of this Agreement shall be effective unless in a written instrument executed and acknowledged by duly authorized representatives of both the County and the Association and recorded in the Public Records of St. Johns County, Florida. Notwithstanding any of the above provisions, the County

and the Association shall each have the right to terminate this Agreement, with or without cause, upon ninety (90) days written notice to the other party.

#### **SECTION 8. SOVEREIGN IMMUNITY**

Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the County beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, Florida Statutes, or other law, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

#### **SECTION 9. INDEMNIFICATION**

To the extent permitted by Florida law, the Association agrees to protect, defend, indemnify, and hold the County, its tenants, officials, officers, employees, and agents free and harmless from and against any and all third party (including employees of the Association and its contractors and subcontractors) claims, liability, losses, and/or causes of action, which may arise from any negligent act or omission of the Association and its employees, agents, contractors, and subcontractors (including court costs and reasonable attorney's fees) associated or connected with the use of the Rights-of-Way by the Association and its employees, agents, contractors, and subcontractors for the purposes set forth herein, including ingress and egress thereto.

#### **SECTION 10. GOVERNING LAW AND JURISDICTION**

This Agreement shall be interpreted and enforced under the laws of the State of Florida, without regard to choice of law provisions. Any litigation arising under this Agreement shall be venued in the Circuit Court of St. Johns County, Florida. The Parties hereto waive trial by jury and agree to submit to the personal jurisdiction and venue of a court in St. Johns County.

#### **SECTION 11. NO PLEDGE OF CREDIT OR PARTNERSHIP**

This Agreement shall neither be deemed to pledge the credit of the County nor to make the County an agent, co-venturer, partner, or fiduciary of the Association, or vice versa.

#### **SECTION 12. NOTICE**

All notice pursuant to this Agreement shall be made in writing and shall be delivered through the United States Postal Service, first class mail, postage prepaid, or recognized overnight courier (such as Federal Express) and addressed to the following addresses of record:

To the County: County Administrator  
500 San Sebastian View  
St. Augustine, Florida 32084

With a copy to: St. Johns County Attorney's Office

500 San Sebastian View  
St. Augustine, Florida 32084

To the Association: Silverleaf Master Owner's Association, Inc.  
111 Nature Walk Parkway, Suite 104  
St. Augustine, Florida 32092  
Attn.: John G. Metcalf

### **SECTION 13. NON-WAIVER**

No consent or waiver, expressed or implied, by either party, to or of any breach or default of the other party, with regard to the performance by said other party of its obligations under this Agreement shall be deemed or construed to constitute consent or waiver to, or of, any other breach or default in the performance of that party, of the same or any other objection of performance incumbent upon that party. Failure on the part of any party to complain of any act or failure to act on the part of the other party in default, irrespective of how long the failure continues, shall not constitute a waiver by that party of its rights and any remedies that exist under this Agreement, at law or in equity.

### **SECTION 14. CONSTRUCTION**

(a) This Agreement shall not be construed against any party on the basis of it being the drafter of the Agreement. The Parties agree that all herein played an equal part in reciprocity in drafting this Agreement.

(b) Capitalized terms contained herein shall have no more force or effect than un-capitalized terms.

(c) Captions and section headings in this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify, or aid in the interpretation or construction of meaning of this Agreement.

### **SECTION 15. TIME OF THE ESSENCE**

The Parties each agree that time is of the essence of this Agreement.

### **SECTION 16. SEVERABILITY**

If any word, phrase, sentence, part, section, subsection, or other provision of this Agreement, or its application to any person, entity, or circumstances is specifically held to be unconstitutional, invalid, or unenforceable for any reason by a court of competent jurisdiction, then such word, phrase, sentence, part, section, subsection, or other or the proscribed application thereof, shall be severable, and the remainder of this Agreement and the application of the provisions hereof to other persons, entities, or circumstances shall not be affected thereby and, to that end, this Agreement shall continue to be enforced to the greatest extent possible consistent

with law and the public interest including, but not limited to, the expenditure of public funds for lawful purposes.

#### **SECTION 17. ENTIRE AGREEMENT, AMENDMENTS**

This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof. The provisions, restrictions, and covenants of this Agreement shall not be modified or amended except in written instrument executed and acknowledged by duly authorized representatives of both the County and the Association.

#### **SECTION 18. ASSIGNMENT**

This Agreement may not be assigned, transferred, or conveyed by the Association or the County without prior written consent from the other party, except that the Association may allow or require other entities to contribute to the cost of its obligations hereunder.

#### **SECTION 19. COMPLIANCE WITH LOCAL, STATE, AND FEDERAL LAWS**

Both the County and the Association, in performing under this Agreement, shall abide by, and comply with, all applicable laws, rules, regulations, orders, and policies, of the local, state, and federal governments.

#### **SECTION 20. ACCESS TO RECORDS**

The cost of reproduction, access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes) and other applicable State and Federal provisions. 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.

#### **SECTION 21. FORCE MAJUERE**

Neither the County nor the Association shall be held in non-compliance with this Agreement, nor suffer any enforcement or penalty relating to this Agreement, where such non-compliance or alleged default occurred or was caused by a strike, riot, war, earthquake, flood, tsunami, severe rainstorm, hurricane, or other act of nature, or other event that is reasonably beyond either party's ability to anticipate or control.

#### **SECTION 22. AUTHORITY TO EXECUTE**

Each of the Parties covenants to the other party that it has lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's duly authorized representative.

#### **SECTION 23. EFFECTIVE DATE**



This Agreement shall be effective on the date of the last signature of the parties hereto.

**SECTION 24. COUNTERPARTS**

This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

*[Signatures pages to follow.]*

**SIGNATURE PAGE FOR AGREEMENT FOR  
LANDSCAPE AND IRRIGATION MAINTENANCE OF CERTAIN  
COUNTY ROAD RIGHTS-OF-WAY**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be made and executed as of the day and date first above written.

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

By: \_\_\_\_\_  
Hunter S. Conrad  
County Administrator

ATTEST: Brandon Patty, Clerk

\_\_\_\_\_  
Deputy Clerk

STATE OF FLORIDA        )  
COUNTY OF ST. JOHNS    )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2020, by HUNTER S. CONRAD, County Administrator of St. Johns County, Florida, and who has acknowledged that he executed the same on behalf of St. Johns County, Florida and that he was authorized to do so. He is personally known to me.

\_\_\_\_\_  
Notary Public; State of Florida  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_

**SIGNATURE PAGE FOR AGREEMENT FOR  
LANDSCAPE AND IRRIGATION MAINTENANCE OF CERTAIN  
COUNTY ROAD RIGHTS-OF-WAY**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be made and executed as of the day and date first above written.

WITNESSES

SILVERLEAF MASTER OWNER'S  
ASSOCIATION, INC., a Florida not-for profit  
corporation

Beverly L. Cunningham  
Print Name: Beverly L. Cunningham

By: Gary F. Hannon  
Gary F. Hannon  
President

Loral E. Burke  
Print Name: Loral E. Burke

STATE OF FLORIDA     )  
COUNTY OF St Johns     )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 6<sup>th</sup> day of July, 2020, by Gary F. Hannon, president of Silverleaf Master Owner's Association, Inc., and who has acknowledged that he executed the same on behalf of Silverleaf Master Owner's Association, Inc. and that he was authorized to do so. He is personally known to me or has produced a valid driver's license as identification.

(SEAL)



Beverly L. Cunningham  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# GG933307  
Expires 11/20/2023

Beverly L. Cunningham  
Notary Public, State of Florida  
Print Name: Beverly L. Cunningham  
My Commission Expires: 11/20/2023  
My Commission No.: GG933307