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**AGENDA ITEM  
ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS**

*Deadline for Submission - Wednesday 9 a.m. – Thirteen Days Prior to BCC Meeting*

**6/20/2023**

**BCC MEETING DATE**

**TO:** Hunter S. Conrad, County Administrator

**DATE:** May 31, 2023

**FROM:** Bradley Bulthuis, County Attorney

**PHONE:** 904 209-0805

**SUBJECT OR TITLE:** AG EHC II (LEN) Multi State 1, LLC Maintenance and Hold Harmless Agreement (Silver Falls)

**AGENDA TYPE:** Consent Agenda, Contract, Resolution

**BACKGROUND INFORMATION:**

AG EHC II (LEN) MULTI STATE 1, LLC (“Developer”) is the developer for the residential community in St. Johns County known as Silver Leaf Parcel 22A Phase 1 (Silver Falls). The Developer is responsible for the operation and maintenance of mail kiosk parking areas and other common areas within the County owned right-of-way. The County has agreed to allow certain improvements consisting of overflow parking. The installation and maintenance of the improvements within the County Right-of-Way is subject to certain conditions, including but not limited to the Developer’s agreement to indemnify and hold the County harmless from damages and expenses which may be incurred as a direct or indirect result of such use of the County Right-of-Way, as further described in the attached maintenance and hold harmless agreement. Staff recommends approval of the agreement.

**1. IS FUNDING REQUIRED?**     No    

**2. IF YES, INDICATE IF BUDGETED.**     No    

**IF FUNDING IS REQUIRED, MANDATORY OMB REVIEW IS REQUIRED:**

**INDICATE FUNDING SOURCE:**

**SUGGESTED MOTION/RECOMMENDATION/ACTION:**

Motion to adopt Resolution 2023-\_\_\_\_\_, approving the terms, conditions, provisions, and requirements of a Maintenance and Hold Harmless Agreement with AG EHC II (LEN) Multi State 1, LLC. regarding certain improvements consisting of overflow parking within a certain portion of the County-owned-right-of-way of Superior Blvd.; and authorizing the County Administrator, or designee, to execute the agreement on behalf of the County.

**For Administration Use Only:**

**Legal:** BB 6/2/2023

**OMB:** LF 6/7/2023

**Admin:** Joy Andrews 6/9/2023

**RESOLUTION NO. 2023-\_\_\_\_\_**

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, AND REQUIREMENTS OF A MAINTENCE AND HOLD HARMLESS AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA AND AG EHC II (LEN) MULTI STATE 1, LLC, REGARDING THE OPERATION AND MAINTENANCE OF MAIL KIOSK PARKING AREAS WITHIN A CERTAIN PORTION OF THE COUNTY OWNED RIGHT-OF-WAY COMMONLY REFERRED TO AS SUPERIOR BLVD; AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE MEMORANDUM OF UNDERSTANDING ON BEHALF OF THE COUNTY.**

**WHEREAS**, AG EHC II (LEN) MULTI STATE 1, LLC (“Developer”) is responsible for the operation and maintenance of mail kiosk parking areas and other common areas within a residential community within St. Johns County, Florida known as Silver Leaf Parcel 22A Phase 1 (Silver Falls); and

**WHEREAS**, certain improvements consisting of overflow parking (“Improvements”) have been, or will be, installed and constructed within a certain portion of the County-owned right-of-way commonly referred to as Superior Blvd (the “County Right-of-Way”), which is owned by St. Johns County (“County”); and

**WHEREAS**, the County has agreed to allow the installation and maintenance of the Improvements within the County Right-of-Way subject to certain conditions, including but not limited to the Developer’s agreement to indemnify and hold the County harmless, to the extent permitted by Florida law, from damages and expenses which may be incurred as a direct or indirect result of such use of the County Right-of-Way, as well as certain other conditions as set forth in the Maintenance and Hold Harmless Agreement attached hereto as Exhibit A and incorporated herein; and

**WHEREAS**, upon completion and installation of the Improvements, the Developer shall have the responsibility for the maintenance, repair, replacement and removal of the Improvements, subject to the County’s right, but not the obligation, to perform such maintenance, repair, replacement or removal, if not timely performed by the Developer, and to invoice the Developer for the cost and expense; and

**WHEREAS**, the County has determined that entering into the Maintenance and Hold Harmless Agreement will serve the interests of the County.

**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 into the body of this Resolution and adopted

as findings of fact.

**Section 2.** The Board of County Commissioners of St. Johns County, Florida hereby approves the terms, provisions, and conditions and requirements of the Maintenance and Hold Harmless Agreement between St. Johns County, Florida and AG EHC II (LEN) MULTI STATE 1, LLC, 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.

**Section 4.** This Resolution shall be effective upon adoption by the Board of County Commissioners.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, State of Florida, this \_\_ day of June, 2023.

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

By: \_\_\_\_\_  
Christian Whitehurst, Chair

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

By: \_\_\_\_\_  
Deputy Clerk

MAINTENANCE AND HOLD HARMLESS AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into this 14 day of February, 2023, by and between ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida, whose address is 500 San Sebastian View, St. Augustine, Florida 32084, (the “County”); and AG EHC II (LEN) MULTI STATE 1, LLC, a Delaware limited liability company, whose address is 9440 Philips Hwy, Ste 7, Jacksonville, FL, 32256 (the “Developer”).DEVELOPER

RECITALS

WHEREAS, the Developer is responsible for the operation and maintenance of mail kiosk parking areas and other common areas within a residential community within St. Johns County, Florida known as Silver Leaf Parcel 22A Phase 1 (Silver Falls) ; and

WHEREAS, certain improvements consisting of overflow parking (“Improvements”) have been, or will be, installed and constructed within a certain portion of the County-owned right-of-way commonly referred to as Superior Blvd (the “County Right-of-Way”), as more particularly depicted in Exhibit “A” hereto, incorporated by reference and made a part hereof; and

WHEREAS, the County has agreed to allow the installation and maintenance of the Improvements within the County Right-of-Way subject to certain conditions, including but not limited to the Developer’s agreement to indemnify and hold the County harmless, to the extent permitted by Florida law, from damages and expenses which may be incurred as a direct or indirect result of such use of the County Right-of-Way, as well as certain other conditions as hereinafter set forth; and

WHEREAS, upon completion and installation of the Improvements, the Developer shall have the responsibility for the maintenance, repair, replacement and removal of the Improvements, subject to the County’s right, but not the obligation, to perform such maintenance, repair, replacement or removal, if not timely performed by the Developer, and to invoice the Developer for the cost and expense.

NOW, THEREFORE, based upon good and valuable consideration and mutual covenants of the parties, the receipt of which and sufficiency of which is hereby acknowledged, the County and the Developer agree as follows:

Section 1. Recitals. The above recitals are true and correct and by this reference are incorporated into and form a material part of this Agreement.

Section 2. Right-of-Way Utilization. The Developer may place, construct and maintain, or cause to be placed, constructed and maintained, the Improvements in the County Right-of-Way as shown on Exhibit A, subject to the terms and conditions contained in this Agreement. The Improvements shall be constructed in accordance with the plans approved by the County in File NoMODCP 23-02. Installation, maintenance, repair and replacement of the Improvements shall be the sole responsibility of the Developer at its sole cost and expense. It is expressly stipulated that this Agreement is a license for permissive use only and that neither the

placement nor maintenance of the Improvements within the County Right-of-Way shall operate to create or vest any property rights to the Developer. Moreover, whenever necessary for the construction, repair, improvement, maintenance, safe and efficient operation, alteration or relocation of all or any portion of the County Right-of-Way, as solely determined by the County in its reasonable discretion, any or all of the Improvements shall be promptly removed from the County Right-of-Way at the sole cost and expense of the Developer and shall be relocated or reset only as the Parties may agree.

If the County, in its sole reasonable discretion, determines that the Improvements, or any part thereof, require repair, replacement or removal, the County shall notify the Developer in writing of said determination. If such notice advises that any condition, damage or deterioration of the Improvements, or any part thereof, constitutes a safety hazard, the Developer shall have seventy-two (72) hours from its receipt of such notice to secure the safety hazard, including but not limited to installing a temporary safety barrier or barricade, if necessary, and fourteen (14) days from its receipt of such notice to complete such repair, replacement or removal as necessary to eliminate or otherwise remedy any safety hazard. In the event of an immediate safety hazard, the County may promptly secure the safety hazard in advance of the Developer's action and invoice the Developer for the cost and expense. The Developer shall have sixty (60) days from the date of said notification to complete any other required repair, replacement or removal. Should the Developer fail to timely complete any repair, replacement or removal, the County shall have the right, but not the obligation, to complete the repair, replacement or removal of the Improvements and invoice the Developer for reimbursement of the costs and expenses incurred of any such repair, replacement, or removal.

Section 3. Indemnification. To the extent permitted by Florida law, the Developer, its successors and assigns agree to protect, defend, indemnify, and hold the County and its tenants, elected officials, officers, employees, agents, and assigns free and unharmed from and against any and all claims, liability, damages, losses and/or causes of action (including without limitation court costs and reasonable attorneys' fees) of any and all third party (including but not limited to employees of the Developer and its contractors and subcontractors) arising or relating to or arise from any negligent act or omission of the , associated or connected with the use of the County Right-of-Way by the Developer, including but not limited to the keeping and maintaining of the Improvements in the County Right-of-Way by the Developer. This indemnification shall survive the termination of this Agreement. Nothing contained in this section is intended to nor shall be construed to operate as a waiver on the part of the County of the limitations of liability set forth in section 768.28, Florida Statutes, or of the County's sovereign immunity.

Section 4. Covenant with Land. This Agreement shall touch and concern the land and shall be a covenant running with the fee interest underlying the County Right-of-Way, whether in existence on the date hereto or constructed in the future.

Section 5. Severability. If any word, phrase, sentence, part, subsection, section or other portion of this Agreement, 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 portion of this Agreement, and all applications thereof, not having been declared void, unconstitutional or invalid shall remain in full force and effect.

Section 6. Governing Law and Venue. This Agreement shall be constructed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida.

Section 7. Attorney's Fees. In connection with any administrative and/or legal action arising under this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs at all levels of the proceedings in addition to any other relief granted.

Section 8. Procedure for Achieving 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 without the express prior written approval of the other party. Should either County or the Developer assign, transfer, or sell any the rights of the Agreement without such prior express written approval of the other party, then such action on the part of either the County or the Developer, shall result in the automatic termination of this Agreement, without further notice or action required on the part of the other party.

Section 9. Entire Agreement. Both the County and the Developer acknowledge that this Agreement 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, either oral or written, among the parties hereto relating to the subject matter of this Agreement except those fully expressed herein, and each party agrees that, in entering into this Agreement, it has not relied on and is not entitled to rely on any statements, promises, or representations other than those set forth herein.

Section 10. Amendments to Agreement. Both the County and the Developer acknowledge that any amendments to this Agreement shall be in writing and shall be executed by duly authorized representatives of both the County and the Developer.

Section 11. Access to Records. The access to, disclosure, non-disclosure, or exemption of records, data, documents, and 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 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.

Section 12. Notices. All notices pertaining to this Agreement shall be delivered either by hand or by certified mail, return receipt requested, to:

The County:                   St. Johns County  
  County Administrator  
  500 San Sebastian View  
  St. Augustine, FL 32084

With copy to:                St. Johns County  
  Office of the County Attorney  
  500 San Sebastian View  
  St. Augustine, FL 32804

The Developer: AG EHC II (LEN) MULTI STATE 1, LLC  
8585 E Hartford Dr. Ste 118  
Scottsdale, Az 85255

With copy to:

Lennar Homes, LLC  
Attn: Zenzi Rogers  
9440 Philips Hwy, Ste 7  
Jacksonville, FL 32256

Section 13. Section Headings. Section headings in this Agreement are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this Agreement or any of its provisions.

Section 14. Negotiated Agreement. This Agreement was negotiated and prepared by both parties with the participation of counsel and advisers of their own choosing. The parties have agreed to the text of this Agreement, and none of the provisions hereof shall be construed against either party on the ground that such party is the author of this Agreement or any part thereof

Section 15. Authority to Execute. Each party to this Agreement covenants to the other that it has the lawful authority to enter into this Agreement and that it has authorized the execution of this Agreement by the representative noted below.

Section 16. Effective Date. This Agreement shall be effective on the date of the last signature of the parties hereto.

[SIGNATURES APPEAR ON FOLLOWING PAGES.]

IN WITNESS WHEREOF, the County and The Developer have caused these presents to be executed on the day and year first written above.

Signed, sealed and delivered  
in our presence as Witnesses:

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

(sign) \_\_\_\_\_  
(print) \_\_\_\_\_

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

(sign) \_\_\_\_\_  
(print) \_\_\_\_\_

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 \_\_\_\_\_, 20\_\_, by Hunter S. Conrad, County  
Administrator, on behalf of St. Johns County, Florida, a political subdivision of the State of  
Florida, who is personally known to me.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



Signed, sealed and delivered

**AG EHC II (LEN) MULTI STATE 1, LLC**

in our presence as Witnesses:

(sign) *Scarlette Lakavage*  
(print) Scarlette Lakavage

Essential Housing Asset Management, LLC,  
an Arizona limited liability company,  
its Authorized Agent

By: *Steven S. Benson*  
Steven S. Benson, its Manager

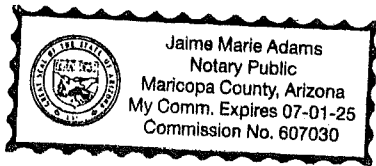
(sign) *Wendy Stoessel*  
(print) Wendy Stoessel

STATE OF ARIZONA                    )  
  )  
COUNTY OF MARICOPA            )

I, the undersigned, a notary public in and for said County in said State, hereby certify that Steven S. Benson, whose name as Manager of Essential Housing Asset Management, LLC, an Arizona limited liability company, as Authorized Agent of **AG EHC II (LEN) MULTI STATE 2, LLC**, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said Essential Housing Asset Management, LLC, as the Authorized Agent of AG EHC II (LEN) MULTI STATE 2, LLC.

Given under my hand and official notarial seal this the 14 day of February, 2023.

{SEAL}



*Jaime Marie Adams*  
NOTARY PUBLIC  
My Commission Expires: 07/01/2025

EXHIBIT "A"  
(The Improvements)

