

RESOLUTION NO. 2014-240

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA APPROVING THE TERMS AND CONDITIONS OF A LICENSE AGREEMENT BETWEEN ST. JOHNS COUNTY, CYPRESS LAKES HOMEOWNERS ASSOCIATION OF ST. JOHNS, INC, UNIT 3, AND THE HOMEOWNERS ASSOCIATION OF CYPRESS LAKES; AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY.**

**WHEREAS**, on January 23, 2001, the County and the Cypress Lakes Homeowners Association of St. Johns, Inc., Unit 3, and the Homeowners Association of Cypress Lakes, Inc. (collectively, the Homeowners Associations) entered into a license agreement permitting the Homeowners Associations to construct, lay, maintain, improve, and repair irrigation lines, landscaping, decorative fencing, and informational and directional signage for Cypress Lakes Subdivision and the County Golf Course; and

**WHEREAS**, the Homeowners Associations have requested that the County install certain improvements on County right-of-way along State Road 207 located in St. Johns County, Florida (the Right-of-Way Improvements); and

**WHEREAS**, upon completion of the construction of the Right-of-Way Improvements, the Homeowners Associations shall have the responsibility for their maintenance, repair and replacement; and

**WHEREAS**, in exchange for the County's installation of the Right-of-Way Improvements, the HOA agrees to indemnify and hold the County harmless from damages and expenses which may be incurred as a direct or indirect result of the Maintenance Activities.

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

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

**Section 2.** The Board of County Commissioners approves the terms and conditions of the attached license agreement between the County and the Homeowners Associations, the contents of which are incorporated herein, and authorizes the County Administrator to execute the agreement on behalf of the County.

**Section 3.** To the extent that there are typographical or administrative errors or omissions that do not change the tone, tenor, or context of this Resolution, this Resolution may be revised without subsequent approval of the Board of County Commissioners.

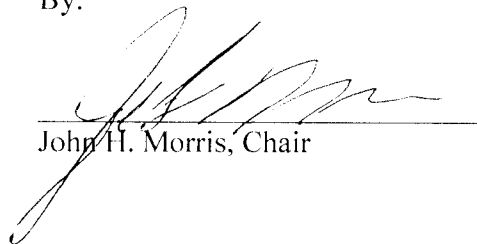
**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 21<sup>st</sup> day of September, 2014.

BOARD OF COUNTY COMMISSIONERS OF  
ST. JOHNS COUNTY, FLORIDA

Attest:

Sam Halterman  
Deputy Clerk

By:

  
John H. Morris, Chair

RENDITION DATE 9/4/14

## **LICENSE AGREEMENT**

This License Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, between St. Johns County, a political subdivision of the State of Florida, whose address is 500 San Sebastian View, St. Augustine, Florida 32084, (the County); Cypress Lakes Homeowners Association of St. Johns, Inc., Unit 3, a Florida not-for-profit corporation, whose address is 461 A1A Beach Blvd., St. Augustine, Florida 32080 (Cypress Lakes Unit 3 HOA); and The Homeowners Association of Cypress Lakes, Inc., Units 2a, 2b, 4 AND 5 (HOA of Cypress Lakes), a Florida not-for-profit corporation, whose address is 461 A1A Beach Blvd., St. Augustine, Florida 32080 (collectively, the Homeowners Associations).

### **Recitals**

**WHEREAS**, on January 23, 2001, the County and the Homeowners Associations entered into a license agreement permitting the Homeowners Associations to construct, lay, maintain, improve, and repair irrigation lines, landscaping, decorative fencing, and informational and directional signage for Cypress Lakes Subdivision and the County Golf Course; and

**WHEREAS**, the Homeowners Associations have requested that the County install certain improvements on County right-of-way along State Road 207 located in St. Johns County, Florida (the County Right-of-Way); and

**WHEREAS**, the County will install certain landscape related improvements on the County Right-of-Way (the Right-of-Way Improvements); and

**WHEREAS**, upon completion of the construction of the Right-of-Way Improvements, the Homeowners Associations shall have the responsibility for their maintenance, repair and replacement; and

**WHEREAS**, in exchange for the County's installation of the Right-of-Way Improvements, the HOA agrees to indemnify and hold the County harmless from damages and expenses which may be incurred as a direct or indirect result of the Maintenance Activities; and

**WHEREAS**, the parties wish to amend and restate the original license agreement to include the Right-of-Way Improvements.

**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 HOA and the County 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. License. The County grants the Homeowners Associations, their agents, and employees a license to construct, lay, maintain, improve, and repair, either above or below the surface of the ground, irrigation lines, landscaping, decorative fencing, and informational and directional signage for Cypress Lakes Subdivision and the County Golf Course within that portion of County right-of-way depicted in Exhibit A to this License Agreement (the License Area). The Homeowners Associations shall be responsible for the cost of such improvements.

Section 3. Right-of-Way Utilization. The County shall install the Right-of-Way Improvements in the County right-of-way under the terms and conditions contained herein. A description of the Right-of-Way Improvements is shown in Exhibit A. The cost of maintenance, repair, or replacement of the Right-of-Way Improvements shall be paid by the Homeowners Associations.

Section 4. Irrigation. The County shall permit the Homeowners Associations to use the County's irrigation system for the purpose of maintenance of the improvements provided in Sections 2 and 3 of this Maintenance Agreement.

Section 5. Indemnification. The Homeowners Associations agree to indemnify, defend, and hold harmless the County and its consultants, agents, and employees from any liability, claims, damages, losses, or expenses, including court costs and reasonable attorney's fees, which may arise from any act or omission of the Homeowners Associations' staff, employees, or agents relating to the installation and maintenance of the improvements provided in Sections 2 and 3 of this License Agreement. Any liability, claims, damages, losses, or expenses payable by the Homeowners Associations under this section shall be apportioned as follows:

- a. Cypress Lakes Unit 3 HOA: 24.88%
- b. Cypress Lakes HOA: 75.12%

Section 6. Installation of Bicycle Rack. The County grants HOA of Cypress Lakes a license to install and maintain a bicycle rack on the property shown in Exhibit B to this License Agreement. HOA of Cypress Lakes agrees to indemnify, defend, and hold harmless the County and its consultants, agents, and employees from any liability, claims, damages, losses, or expenses, including court costs and reasonable attorney's fees, which may arise from any act or omission of the HOA of Cypress Lakes's staff, employees, or agents relating to the installation and maintenance of the bicycle rack.

Section 7. Covenant with Land. This Agreement shall touch and concern the land and shall be a covenant running with the fee interest underlying the County's Right-of-Way, whether in existence on the date hereto or constructed in the future.

Section 8. Term. The duration of this License Agreement shall be for a term of 10 years, commencing from the date of this License Agreement, and automatically renewing unless terminated by 60 days written notice by either party.

Section 9. Retention of Use of License Area. The County retains the right to use the License Area in any manner not inconsistent with the rights granted herein to the Homeowners Associations.

Section 10. Standard of Work. All work performed in the License Area shall be accomplished in a good, safe, and workmanlike manner and in accordance with applicable federal, state, and local laws and regulations. Prior to the installation of any improvements, the Homeowners Associations shall obtain a building permit from the County's Building Department.

Section 11. Improvements Shall Not Obstruct Motorists. Improvements installed under this License Agreement shall not be installed so as to obstruct the field of vision of motorists or pedestrians along any right-of-way, whether paved or unpaved. In all cases, sight distance shall meet the requirements set forth in the most recent edition of the Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.

Section 12. Revocation. This License Agreement is subject to revocation by the County if the License Area is not utilized for the purposes outlined herein or if there is a change in the ownership of the License Area.

Section 13. Removal of Equipment. Upon termination of this License Agreement, or revocation by the County, the Homeowners Associations shall, at their sole cost and expense, remove all equipment, accessories, and materials owned by the Homeowners Associations from the License Area and restore the License Area to as good a condition as it was before the Homeowners Associations entered upon it and otherwise comply with all applicable federal, state, and local laws and regulations.

Section 14. Severability. If any part of this Agreement, or any application thereof, is declared void, unconstitutional, or invalid for any reason, then such part 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 effect.

Section 15. Governing Law and Venue. This Agreement shall be constructed according to the laws of the State of Florida. Venue for any administrative or legal action arising under this Agreement shall be in St. Johns County, Florida.

Section 16. Procedure for Achieving Assignment. In light of the scope and rationale for this Agreement, neither the County, nor the Homeowners Associations may assign, transfer, or sell any of the rights noted in this Agreement without the express written approval of the other party. Should either County or the Homeowners Associations 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 Homeowners Associations shall result in the automatic termination of this Agreement, without further notice or action required on the part of the other party.

Section 17. Amendments to Agreement. Both the County and the Homeowners Associations acknowledge that this Agreement constitutes the complete agreement and understating of both parties. Both the County and the Homeowners Associations 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 Homeowners Associations.

Section 18. Access to Records. The access to, disclosure, non-disclosure or exemption of records associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes). "Records" shall be defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received in connection with this Agreement.

Section 19. Public Records.

a. The cost of reproduction, access to, disclosure, non-disclosure, or exemption of records, data, documents, 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 local, state or federal law. Access to such public records, may not be blocked, thwarted, or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

b. As a condition of entering into this Agreement, the Homeowners Associations shall provide access to all records, data, documents, and/or materials subject to the applicable provisions of Chapter 119, Florida Statutes, and made or received by the Homeowners Associations in conjunction with this Agreement. Specifically, if the Homeowners Associations are authorized, and acts on behalf of the County in performing under this Agreement, the Homeowners Associations shall:

- (1) Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the service being performed by the Homeowners Associations;
- (2) Provide the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the costs provided in Chapter 119, Florida Statutes, or as otherwise provided by applicable law;
- (3) Ensure that public records that are exempt or confidential and exempt from public disclosure requirements are not disclosed except as authorized by applicable law; and
- (4) Meet all requirements for retaining public records, and transfer at the Homeowners Associations' sole cost and expense, all public records in the

possession of the Homeowners Associations upon termination of this Agreement. The Homeowners Associations shall destroy any duplicate records that are exempt or confidential and exempt from public disclosure requirements. Any public records stored electronically must be provided to the County in a format that is compatible with information technology systems maintained by the County.

c. Failure by the Homeowners Associations to grant such public access shall be grounds for immediate, unilateral termination of this Agreement by the County. The Homeowners Associations shall promptly provide the County notice of any request to inspect or copy public records in the possession of the Homeowners Associations and shall promptly provide the County a copy of the Homeowners Associations' response to each such request.

Section 20. License Agreement Supersedes Pre-Existing Agreement. This License Agreement supersedes the license agreement entered into between the County and the Homeowners Associations on January 23, 2001.

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

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

By: \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_ as \_\_\_\_\_ of St. Johns County, Florida, a political subdivision of the State of Florida, on behalf of the County, who is personally known to me or has produced \_\_\_\_\_ as identification.

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

CYPRESS LAKES  
HOMEOWNERS ASSOCIATION  
OF ST. JOHNS, INC., UNIT 3

By: \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_ as \_\_\_\_\_ of St. Johns County, Florida, a political subdivision of the State of Florida, on behalf of the County, who is personally known to me or has produced \_\_\_\_\_ as identification.

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

THE HOMEOWNERS'  
ASSOCIATION OF CYPRESS  
LAKES, INC.

By: \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_ as \_\_\_\_\_ of St. Johns County, Florida, a political subdivision of the State of Florida, on behalf of the County, who is personally known to me or has produced \_\_\_\_\_ as identification.

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