

**RESOLUTION NO. 2021- 508**

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE A LICENSE AGREEMENT FOR USE OF A PORTION OF COUNTY RIGHT OF WAY ON DONDANVILLE ROAD.**

**RECITALS**

**WHEREAS**, the County and S.W. Cowboy, Inc. ("Cowboys") entered into a Lease on April 28, 1981 for use of a portion of County right of way on Dondanville Road to be used as a parking lot; and

**WHEREAS**, Cowboys has entered into a Purchase & Sale Agreement for sale of their restaurant at 299 Dondanville Road, with closing scheduled for December 15, 2021. The Buyer, Leeallway LLC, has requested use of this right of way and has submitted a License Agreement, attached hereto as Exhibit "A," incorporated by reference and made a part hereof; and

**WHEREAS**, this 60-foot strip of County right of way, contiguous to Buyer's property, will be used as a public parking lot; and

**WHEREAS**, licensing of the right of way is conditioned upon Buyer's acquisition of the restaurant located at 299 Dondanville Road, and Buyer's ability to obtain all requisite local, state and federal licenses, permits, and/or other necessary approvals; and

**WHEREAS**, Buyer has agreed to pay \$750.00 per month or \$9,000 per year, including a three percent (3%) annual escalator, for use of the property as set forth in the License Agreement; and

**WHEREAS**, this is a revocable License Agreement and should the County determine a need for the property, the County could reclaim the property by providing one (1) year written notice; and

**WHEREAS**, the County has determined that executing the referenced License Agreement is in the overall best interests of the citizens of St. Johns 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 by reference into the body of this Resolution and such recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners hereby approve the terms of the Amendment to Lease Agreement and authorize the County Administrator, or designee, to execute said Amendment.

Section 3. To the extent that there are typographical, scrivener, or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Amendment may be revised without subsequent approval by the Board of County Commissioners.

Section 4. The Clerk of Court is instructed to file the License Agreement in the Clerk's Office.

PASSED AND ADOPTED this 7th day of December, 2021.

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

BY: Henry Dean  
Henry Dean, Chair

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

RENDITION DATE DEC 9 2021

Robin L. Platt  
Deputy Clerk



## EXHIBIT "A" TO RESOLUTION

### LICENSE AGREEMENT

**THIS LICENSE AGREEMENT**, made and executed this \_\_\_\_ day of December, 2021, by and between **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose address is 500 San Sebastian View, St. Augustine, Florida 32084, hereinafter referred to as the "County", and **LEEALLWAY LLC**, whose principal address is 701 Anastasia Boulevard, St. Augustine, Florida 32080, hereinafter referred to as the "Licensee".

**WHEREAS**, the Licensee has requested this License Agreement authorizing use of a certain public right-of-way on Dondanville Road, St. Augustine, Florida 32080, to be used as a public parking lot; and

**WHEREAS**, this 60' public right of way along Dondanville Road is located contiguous to Licensee's property and more particularly described on Exhibit "A", attached hereto and by reference incorporated and made a part hereof, hereinafter the "Premises"; and

**NOW THEREFORE**, for value received and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County does hereby grant to the Licensee, without warranty, a non-exclusive, personal and revocable license, for the temporary use of the right-of-way mentioned above, pursuant to the following conditions, provisions, and terms:

1. The recitals set forth above are true and correct and are incorporated into and made part of this License Agreement by reference.

2. License. The parties hereto mutually agree that licensing of the Premises as provided herein is conditioned upon Licensee's acquisition of the restaurant located at 299 Dondanville Road, and their ability to obtain all requisite local, state and federal licenses, permits, and/or other necessary approvals including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits and construction permits (collectively "Government Approvals") no later than one hundred twenty (120) calendar days following full execution of this Agreement. County authorizes Licensee, at Licensee's sole cost and expense, to prepare, execute and file all required applications to obtain Government Approvals. County agrees to reasonably assist Licensee with Licensee's applications for the Government Approvals, however assumes no responsibility for obtaining and/or maintaining any such Government Approvals.

3. Term. To use above-described Premises for an initial term of five (5) years, commencing December 15, 2021 (Commencement Date) and expiring December 14, 2026. Upon expiration of the initial term of this License Agreement, or any extension provided for hereafter, and provided Licensee is not then in default of this License Agreement, Licensee shall have the option to renew this License Agreement for up to five (5) additional terms of five (5) years each, not to exceed thirty (30) years or until December 14, 2051. This License Agreement

shall automatically renew for each successive five (5) year term, on the same terms and conditions as contained herein, providing that neither party notifies the other in writing of intent not to accept such extension at least one (1) year prior to the end of the then current term.

4. License Fee. An annual licensing fee, payable in twelve (12) equal monthly payments, plus applicable sales tax, shall be due and payable from Licensee no later than the fifteenth day of each month. Upon any extension of the License Agreement as provided for herein, the licensing fee shall increase annually on the anniversary of the Commencement Date by an amount equal to three percent (3%) of the fee paid during the previous year. A late fee in the amount of five percent (5%) shall be assessed against any monthly licensing payment not made within 15 days of the due date. Lessee agrees to pay the County according to the following schedule:

<u>Start Date</u>	<u>End Date</u>	<u>Annual Fee</u>	<u>Monthly Fee</u>
12/15/2021	12/14/2022	\$ 9,000.00	\$750.00
12/15/2022	12/14/2023	\$ 9,270.00	\$772.50
12/15/2023	12/14/2024	\$ 9,548.10	\$795.67
12/15/2024	12/14/2025	\$ 9,834.54	\$819.54
12/15/2025	12/14/2026	\$10,129.58	\$844.13

5. Non-exclusive Use. Although the Licensee may enter and use the subject Premises as a public parking lot, the Licensee shall not be in possession of the Premises. The County shall possess and otherwise control all aspects of use of the Premises. This license shall be non-exclusive and Licensee will allow the continuance of any use or access by the general public and the County, which have become customary on the Premises. Moreover, Licensee agrees to allow the County to grant any easement it deems appropriate during the period of this license that burden the same Premises, so long as such easement does not substantially prevent Licensee's intended use of the Premises for more than thirty (30) continuous days.

6. Use of Property. This License Agreement permits forty-five (45) parking spaces along either side of Dondanville Road sixty foot (60') right-of-way, each parking space being 18' x 24'. Licensee may also plant shrubs and lay coquina shell along said right-of-way, and establish planting areas and erect lighting fixtures. Licensee shall not use any fertilizer or herbicide to maintain existing vegetation or establish/maintain plantings. Only the mechanical removal of vegetation is permitted. Licensee shall not charge restaurant patrons a parking fee and will insure that no vehicle remains parked in the right-of-way more than three and a half (3.5) hours during a 24-hour period.

7. Assignment. Licensee shall have the right to assign this License Agreement, with prior written consent of the County (which consent shall not be unreasonably denied), provided any assignment shall fully bind Assignee to the terms and conditions of this Agreement as a successor Licensee.

8. Condition of Property. Licensee acknowledges that they have inspected the Premises and accept the License Agreement as-is with full knowledge of the condition of the

Premises. The County makes no representations to Licensee with respect to the Premises other than those set forth in this License Agreement.

9. Licensee's Obligations.

- a. All improvements placed on the premises shall become the property of the County upon termination of this License Agreement or any renewal thereof. However, the County may at its option, require the Licensee, at Licensee's sole cost and expense, to remove any or all of said improvements, and to restore the premises to its original condition upon termination or expiration of this License Agreement, or any renewal thereof.
- b. Licensee agrees that they shall be responsible for the grading, maintenance, repair, and replacement of the parking area, any related improvements, and all landscaping on the premises. Licensee shall not use any fertilizer or herbicide to maintain existing vegetation or establish/maintain plantings. Only the mechanical removal of vegetation is permitted. Licensee shall keep the premises in good condition and repair and in compliance with all applicable laws, rules, regulations and ordinances, in their use and operation of the right-of-way.
- c. Licensee shall not use said premises in any manner that will obstruct or interfere with or encroach on the walks or approaches to said premises.
- d. The Licensee shall make no improvements to the subject Premises, except routine maintenance, without the prior written permission of the County. The Licensee shall make no improvements, or rely on the use of the Premises in any way, which would make this License irrevocable. The Licensee specifically hereby waives making any argument or claim that this License is irrevocable.
- e. The Licensee shall not be permitted to make or suffer any waste or unlawful, improper or offensive use of Premises.
- f. The Licensee shall not make any unlawful, immoral, improper or offensive use of the Property nor allow its employees, agents, invitees or guests to utilize said Property for any purpose other than that herein.
- g. The Licensee agrees to be responsible for the payment of any taxes that may be determined to be owed or incurred, now or in the future, as a result of the parties entering into this License Agreement.
- h. The Licensee shall conform to and comply with all laws, orders and regulations of the federal, state, county and municipal governments and all of their departments and bureaus.

- i. Notwithstanding any other provision of this license, the Licensee hereby releases any rights they have in regards to the coupling of this license with an interest, other than the rights granted in this License Agreement.

10. Right of Entry by County. The County and its agents, servants, and employees shall have and hereby reserve their right and privilege, at all reasonable times during the term of this license, to enter said Premises to examine and inspect the same. The Licensee shall not cause or permit any use of the Premises for other than those uses specifically provided for in this License.

11. Indemnification. The Licensee, in consideration for the use of the Premises, does hereby release and discharge and further will indemnify and save harmless the County from any and all claims for personal injuries or property damages during the existence of this License, arising in any manner by virtue of the use or occupancy of such premises by the Licensee, or agents or invitees of the Licensee, and that the Licensee does hereby further agree to indemnify and save harmless the County from liability for damage, injury or death to any person or persons arising out of the use of said property, or from the lack of keeping same in good repair and order, or from the negligent operation of same, or for any other cause for any nature whatsoever, provided such damage, injury or death is not due to County's own negligence. This provision shall survive expiration or termination of this Agreement. The parties acknowledge that specific consideration has been exchanged for this provision.

12. Insurance. Licensee shall be responsible for insuring this site and will maintain, at Licensee's sole expense, comprehensive or commercial general liability insurance for this site for the duration of this License Agreement. The County shall be named as an additional insured on the Licensee's liability policy. The Licensee, at its own expense, shall keep in force and at all times maintain during the term of this Agreement:

a. General Liability Insurance: General Liability Insurance issued by responsible insurance companies and in a form acceptable to the Licensor, with combined single limits of not less than One Million Dollars (\$1,000,000) for Bodily Injury and Property Damage per occurrence, \$2,000,000 aggregate, and Fire damage liability insurance in the minimum amount of \$50,000 per occurrence.

b. Workers' Compensation Coverage: Full and complete Workers' Compensation coverage, as required by State of Florida law, shall be provided.

c. Insurance Certificates: The Licensee shall provide the County with Certificate(s) of Insurance on all the policies of insurance and renewals thereof in a form(s) acceptable to the County. The certificates will be filed with the St. Johns County Real Estate Division prior to occupancy of the Property. Said liability policies shall provide that the County be an additional insured.

Certificate Holder Address: St. Johns County, a political subdivision of the State of Florida  
500 San Sebastian View  
St. Augustine, FL 32084

The County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty days (30) prior to the effective date of said action.

d. All insurance policies shall be issued by responsible companies acceptable to the Licensor and licensed and authorized under the laws of the State of Florida.

13. Termination.

a. If Licensee fails to comply with or abide by any term, provision or stipulation in this license, and such default continues for sixty (60) days after receipt of written notice of default, the County may terminate this license and terminate Licensee's use of said Premises due to Licensee's failure to comply with the terms of this license.

b. If sometime in the future, the County determines that, in its sole discretion, the licensed portion of the property is needed for another public purpose, the County agrees to give one (1) year written notice to the Licensee, without further liability between the parties except as expressly and specifically provided for in this license. The foregoing notice requirement shall not apply in the event the Premises are needed for disaster relief purposes as a result of a declared state of emergency by any unit of federal, state, or local government. In such event, the County shall provide the Licensees with as much notice as is reasonably practicable under the circumstances, and this license shall be suspended only for the duration of the emergency.

c. The waiver of County of any such breach hereof on the part of the Licensees, or any time or from time to time, shall not be deemed, held, or construed as a waiver of any subsequent breach, or imply any further indulgence.

d. Licensee reserves the right to terminate this license by giving the County a sixty (60) day written notice advising of such unsuitability and electing to terminate this License Agreement at the end of the 60-day period.

14. Notice. Notice under this Agreement shall be given to the COUNTY by mailing written notice postage prepaid to:

County: St. Johns County  
Real Estate Division  
500 San Sebastian View  
St. Augustine, FL 32084

Licensee: Leeallway LLC  
701 Anastasia Boulevard  
St. Augustine, FL 32080

15. No Recording. This License shall not be recorded in the official records of St. Johns County, Florida by either party.

16. No Interest in the Premises. This License is the grant of a personal right to the Licensee. This License shall not be construed to create any real property interest in the Premises.

17. Acceptance. This License Agreement constitutes the entire agreement between the County and the Licensee and supersedes all prior arrangements and understandings whether written or oral relative to the subject matters thereof. Except as otherwise specifically set forth in this Agreement, neither party makes any representation or warranty, express or implied, statutory or otherwise to the other. This Agreement may not be amended or modified except by a written instrument executed by both parties.

18. Construction of Agreement. The parties hereby acknowledge that they fully reviewed this Agreement, its attachments, and had the opportunity to consult with legal counsel of their choice, and that this Agreement shall not be construed against any party as if they were the drafter of this Agreement.

19. Governing Law and Venue. This License Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any legal, equitable, or administrative dispute arising in connection with this License Agreement shall lie exclusively in St. Johns County and any trial shall be non-jury. Should any such dispute arise, the prevailing party shall be entitled to receive reasonable costs and attorney's fees incurred in connection with the dispute.

20. Severability. If any part of this License Agreement, or any application thereof, is declared invalid for any reason, then such part, or the proscribed application, shall be severable, and the remaining portions of this License Agreement, and all applications thereof, not having been declared invalid shall remain in effect.

21. Non-waiver. The execution of this license Agreement shall not constitute a waiver by either party hereto of any right or claim of right to the subject lands or to use the subject lands.

THE REMAINDER OF THIS PAGE PURPOSELY LEFT BLANK.

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

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

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

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

By: \_\_\_\_\_  
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 December, 2021 by Hunter S. Conrad as County Administrator for St. Johns County who is personally known to me.

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

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF WITNESSES:

LEEALLWAY LLC

Witness: Joyce A. Volley  
Print Name: Joyce A. Volley

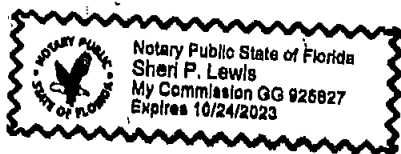
[Signature]  
Print Name: HANJING SHU  
Title: president

Witness: Sheri Lewis  
Print Name: Sheri Lewis

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

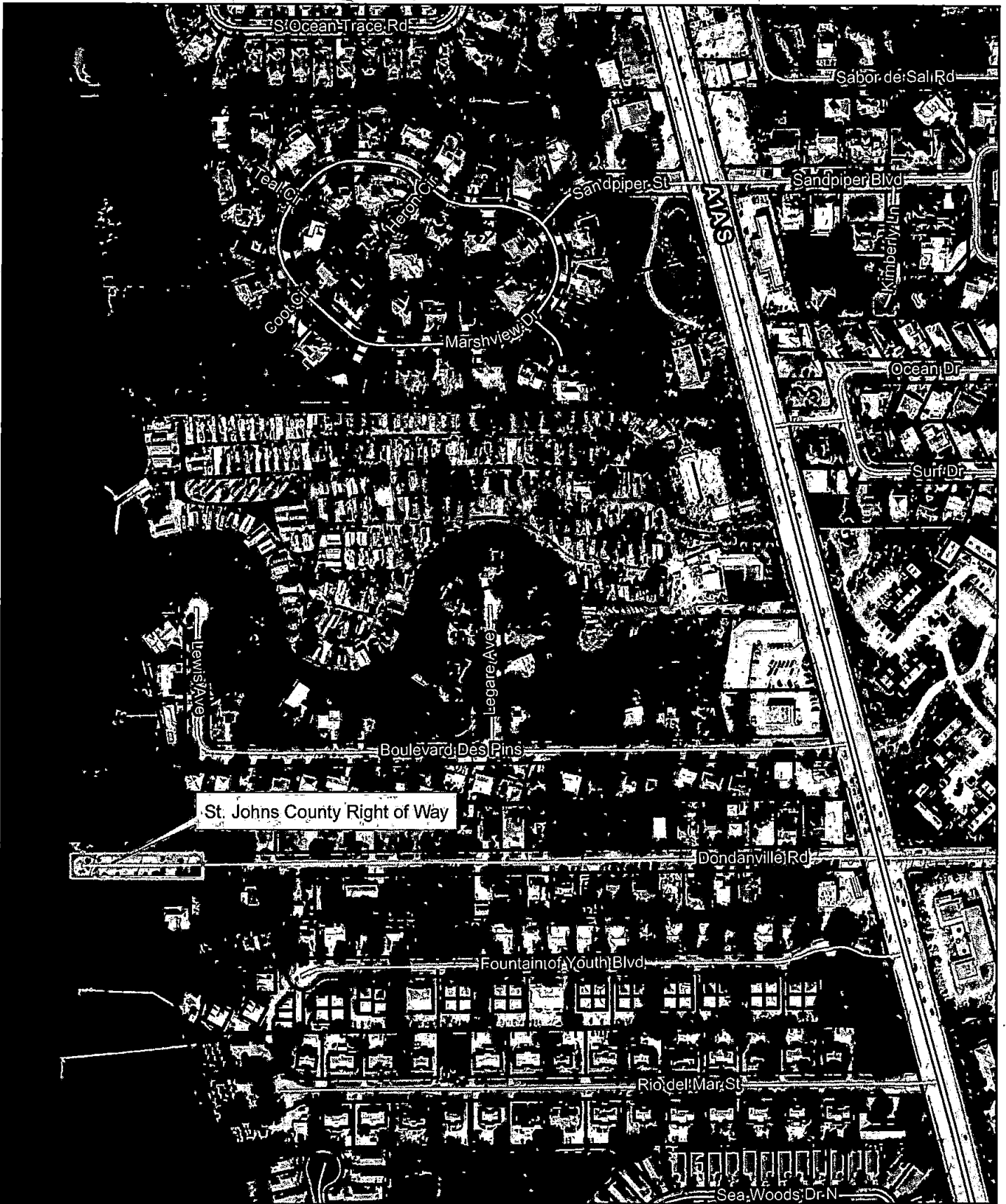
The foregoing instrument was acknowledged before me by means of  <sup>November</sup> physical presence or  online notarization, this 19th day of ~~December~~, 2021, by HANJING SHU as president for Leeallway LLC who is personally known to me or has produced FL 7D DL as identification.

Sheri Lewis  
Notary Public  
My Commission Expires:



**EXHIBIT "A" TO LICENSE AGREEMENT**

ALL THAT PART OF DONDANVILLE ROAD, A SIXTY (60) FOOT COUNTY ROAD RIGHT-OF-WAY BEING WEST OF THE EXTENDED WEST LINE OF LOT 25, BLOCK 2, WILLIAMSON MANOR, AS IN MAP BOOK 8, PAGE 64 AND EAST OF THE WATERS OF SAN JULIAN CREEK.



2019 Aerial Imagery  
 0 100 200  
 Feet  
 November 19, 2021

# ROW License Agreement

## *Dondanville Road*

Land Mngt. Systems  
 Real Estate Division  
 209-0764

**Disclaimer:**  
 This map is for reference use only.  
 Data provided are derived from multiple  
 sources with varying levels of accuracy.  
 The St. Johns County Real Estate Division  
 disclaims all responsibility for the accuracy  
 or completeness of the data shown herein.

