

AGREEMENT

This **AGREEMENT** is executed this 22^d day of JANUARY, 2020 by and between **INDIAN TRAIL IMPROVEMENT DISTRICT**, an independent special DISTRICT of the State of Florida whose mailing address is 13476 61st Street North, West Palm Beach, Florida 33412 (hereafter, "DISTRICT"), and **SANTA ROSA HOME-OWNERS ASSOCIATION, INC.**, a Florida corporation not-of-profit, whose mailing address is c/o Joseph Kuharcik, Esq., 1211 Plaza Circle, Singer Island, Florida 33404 (hereafter, "Association") (DISTRICT and ASSOCIATION may be referred to collectively as the "PARTIES").

RECITALS

WHEREAS, that certain Plot Plan prepared by Teddy O. Potter & Associates incorporated by reference as an Exhibit to that certain *Corrected Affidavit of Exemption* approved by Palm Beach County Subdivision Committee on April 18, 1979 and recorded on June 13, 1979 in Official Record Book 3078, Page 1509 of the Official Records of Palm Beach County, Florida (hereafter, the "Plot Plan"), established certain easements for road, drainage and public utility purposes (collectively hereafter, the "Easements"), encumbering all real property in Santa Rosa Groves, an unrecorded subdivision located in Section 32, Township 42 South, Range 40 East, Palm Beach County, Florida (hereafter, the "Development"), more particularly identified in the attached **Exhibit "A"** (collectively, the "Easements"); and

WHEREAS, the Easements allow construction and maintenance of roads, drainage facilities and public utilities serving the common interests of lot owners in the Development (collectively, the "Improvements"); and

WHEREAS, by that certain Amended Declaration of Covenants and Restrictions recorded on February 9, 1981 in Official Record Book 3461, Page 77 of the Official Records of Palm Beach County, Florida (the "Declaration") responsibility for maintenance of the Improvements is assigned to ASSOCIATION; and

WHEREAS, pursuant to the terms of the Declaration, ASSOCIATION has offered to convey its interest in the Easements and to assign its maintenance responsibilities for the Improvements to DISTRICT; and

WHEREAS, DISTRICT has agreed to accept conveyance of the Easements and to take further steps to assure permanent maintenance of the Improvements in the manner provided in Chapter 298, Florida Statutes, and in District's Special Act, Chapter 2002-330, Laws of Florida (as amended), provided that certain concerns regarding ASSOCIATION's ability to convey the Easements free and clear to DISTRICT are resolved to DISTRICT'S satisfaction (hereafter, the "District's Concerns"); and

WHEREAS, the PARTIES agree the District's Concerns can be resolved most expeditiously by obtaining a Court Judgment affirming the legal authority of ASSOCIATION to convey the Easements and to assign its maintenance responsibilities to DISTRICT (hereafter, the "Declaratory Action") and ASSOCIATION has agreed to pursue such Declaratory Action; and

WHEREAS, ASSOCIATION's pursuit of an affirmative Declaratory Action will be facilitated and expedited to the extent individual owners of lots in the Development (hereafter, the "Landowners") voluntarily execute deeds formally conveying those segments of the Easements upon their individual properties to ASSOCIATION (the "Landowner Deeds"), in which case they need not be joined in the Declaratory Action; and

WHEREAS, in discussions with DISTRICT, certain Landowners have agreed to provide Landowner Deeds and assist the PARTIES' efforts to resolve the District's Concerns; provided, however, that Landowner Deeds shall be delivered only to ESCROW AGENT and held in escrow during the time ASSOCIATION pursues an affirmative, non-appealable Court Judgment; and

WHEREAS, the PARTIES agree that Landowner Deeds shall not under any circumstances be physically delivered to ASSOCIATION, nor shall Landowner Deeds be recorded in the Public Records or otherwise disposed of except in strict compliance with the terms of this Agreement; and

WHEREAS, ESCROW AGENT has agreed to serve in a limited role without additional compensation as custodian of the instruments relating to conveyance of interests of real property identified in this Agreement and to dispose of these instruments only in the manner provided herein; and

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

Section 1: INCORPORATION OF RECITALS. The foregoing recitals are true and correct and are incorporated herein by this reference.

Section 2: COOPERATIVE EFFORTS. The PARTIES agree it is in their mutual interest to cooperate in resolving the District's Concerns and assuring transfer of ASSOCIATION's maintenance responsibilities to DISTRICT in the manner and to the extent provided in this Agreement. In order to reduce the complexity of and expedite the Court Judgment process, DISTRICT and ASSOCIATION agree to share certain responsibilities in soliciting Easement Deeds from Landowners to the extent and in the manner provided herein. This provision shall survive termination of this Agreement.

Section 3. ASSOCIATION'S RESPONSIBILITIES

A. **Resolution of District's Concerns.** Except as otherwise specifically set forth herein, ASSOCIATION shall be exclusively responsible for preparing, filing and diligently pursuing resolution of the District's Concerns. This activity includes, but is not limited to:

- (1) Preparation of Landowner Deeds (special warranty form) for each parcel within the Development conveying the subject Easements to the ASSOCIATION; and
- (2) Assembly and mailing of letters to Landowners soliciting voluntary conveyance of Landowner Deeds. ASSOCIATION and DISTRICT shall cooperate in developing the content of the written solicitation to Landowners, as provided herein. Letters shall include a stamped, return receipt envelope directing each Landowner to respond to DISTRICT, as provided in Section 5, below. Return responses will be addressed to ESCROW AGENT. All costs of assembling and mailing the written solicitation of Easement Deeds to Landowners shall be the ASSOCIATION's responsibility; and
- (3) Filing an action for Declaratory Relief in Palm Beach County Circuit Court requesting a judicial determination resolving the issue of the legal validity of the Easements and the ASSOCIATION's authority to convey the Easements to DISTRICT. ASSOCIATION agrees to diligently pursue this Court action to judgment and to keep DISTRICT informed as to the status of the litigation and provide updates upon reasonable request. Costs of preparing, filing and pursuing the Declaratory Action shall be the ASSOCIATION's responsibility.
- (4) ASSOCIATION shall provide DISTRICT written notice of receipt of a final, non-appealable judgment in the Judicial Action. If the final judgment is favorable, ASSOCIATION shall direct ESCROW AGENT in writing to release the Deeds held by ESCROW AGENT for further action in accordance with the terms of this Agreement.

B. **Conveyance of ASSOCIATION Easements.** Within thirty (30) calendar days from the Effective Date of this Agreement, ASSOCIATION shall deliver to ESCROW AGENT:

- (1) A special warranty deed conveying ASSOCIATION's interests in the Easements to DISTRICT; and

- (2) A Quitclaim Deed as to any interest ASSOCIATION may have in all Easements shown on the Plot Plan and in the Declaration.

ASSOCIATION's deeds shall be held by ESCROW AGENT in accordance with the terms of Section 5 of this Agreement.

C. **General Assignment of Maintenance Responsibilities.** Within thirty (30) calendar days from a written request from DISTRICT, ASSOCIATION shall deliver to ESCROW AGENT a General Assignment of ASSOCIATION's Maintenance Responsibilities under the Declaration (hereafter, the "General Assignment"). The General Assignment shall expressly acknowledge that DISTRICT's duty to maintain the Improvements shall not commence until the General Assignment is formally accepted by Resolution of the DISTRICT's Board of Supervisors. ASSOCIATION acknowledges that DISTRICT will not adopt a Resolution until DISTRICT has completed the procedures for formation of a Unit of Development required by Chapter 298, Florida Statutes.

D. **Transfer of SFWMD Permit Operating Entity Designation.** Within thirty (30) calendar days from a written request from DISTRICT, ASSOCIATION shall deliver to DISTRICT executed consents or other required documents transferring operating responsibility for Santa Rosa Groves' SFWMD Environment Resources Permit No. 50-00635-S (hereafter, the "Permit"). ASSOCIATION shall cooperate as reasonably necessary to effect transfer of the Permit. This provision shall survive termination of this Agreement.

Section 4. DISTRICT'S RESPONSIBILITIES.

A. **Support for ASSOCIATION's Declaratory Action.** DISTRICT will support and assist ASSOCIATION's efforts to resolve the District's Concerns. Such assistance and support shall include, but is not limited to the following:

- (1) DISTRICT will provide a cover letter to Landowners acceptable to ASSOCIATION supporting ASSOCIATION's request and soliciting Landowner voluntary cooperation. DISTRICT's cover letter will be included in ASSOCIATION's initial solicitation to Landowner Deeds.
- (2) DISTRICT will provide ASSOCIATION sufficient stationery and envelopes (including for self-addressed return receipt) for the mailing to Landowners.
- (3) DISTRICT will maintain accurate records of Landowner responses to the solicitation and promptly notify ASSOCIATION's legal counsel of any correspondence received.

- (4) DISTRICT will review and verify the technical accuracy of Landowner Deeds and may take reasonable actions to obtain corrections, if required. The PARTIES acknowledge that joinder of Landowners' mortgagees or other lienholders will not be solicited. DISTRICT acknowledges that it will not consider lack of joinder of Landowners' lienholders as a title defect if ASSOCIATION receives an affirmative judicial decision in its Declaratory Action.
- (5) DISTRICT may provide additional support and assistance to ASSOCIATION by mutual agreement.

B. **Liaison to Landowners.** DISTRICT will serve as liaison to Landowners to keep them informed of progress in resolving the District's Concerns. As liaison, DISTRICT may at its discretion correspond with and keep Landowners informed of progress made in resolving the District's Concerns and other matters related to formation of a DISTRICT Unit of Development. ASSOCIATION will receive copies of any such correspondence.

C. **DISTRICT Actions Upon Receipt of a Favorable Final Judgment in ASSOCIATION's Declaratory Action.**

Upon receipt from ASSOCIATION of written notice of a favorable final, non-appealable judgment and termination of the Escrow, DISTRICT shall:

- (1) Direct ESCROW AGENT to release the Landowner and ASSOCIATION Deeds in its custody and prepare them for recording in the Public Records as soon as practicable. DISTRICT shall be responsible for obtaining any required additional deeds or corrections prior to recording; and
- (2) Resume the process provided in Chapter 298, Florida Statutes, to activate a Unit of development for Santa Rosa Groves.

D. **DISTRICT Costs.** Costs incurred by DISTRICT in assisting ASSOCIATION to resolve the District's Concerns shall not be a direct cost to ASSOCIATION. However, the PARTIES acknowledge that all such costs incurred by DISTRICT shall be considered as costs of Unit of Development formation which shall be included in the Assessment of Benefits and Report of Engineer required by Chapter 298, Florida Statutes.

Section 5. ESCROW AGENT'S RESPONSIBILITIES.

A. The law firm of Caldwell Pacetti Edwards Schoech & Viator LLP shall act as ESCROW AGENT.

B. ESCROW AGENT shall hold in escrow all Easement Deeds received from Landowners and ASSOCIATION upon the following terms and conditions:

- (1) Upon ASSOCIATION's receipt of a final, non-appealable Court judgment affirming the validity of the Easements and the legal authority of ASSOCIATION to convey them to DISTRICT, ESCROW AGENT shall release all Deeds in its possession to DISTRICT for recording in the Public Records.
- (2) If an affirmative final Court judgment is not obtained within two (2) years from the date of this Agreement, ESCROW AGENT shall return the Easement Deeds to the individual Landowners who executed the same and to the ASSOCIATION; provided, however, this time may be extended by ASSOCIATION and DISTRICT in writing if ASSOCIATION is in good faith pursuing resolution of the District's Concerns.
- (3) If the final judgment is negative, ESCROW AGENT shall return the Easement Deeds to the individual Landowners who executed the same and to the ASSOCIATION.

C. ESCROW AGENT shall have no liability to ASSOCIATION, DISTRICT or Landowners provided ESCROW AGENT acts in good faith to perform its duties as set forth in this Agreement.

Section 6. EXPIRATION; TERM OF AGREEMENT. This Agreement shall terminate upon the first to occur of:

A. Expiration of two (2) years from its Effective Date, unless extended by the PARTIES in writing as provided herein; or

B. Acceptance by DISTRICT of ASSOCIATION's Deed(s) conveying the Easements. Acceptance shall be in the form of a Resolution to that effect adopted by DISTRICT's Board of Supervisors; or

C. ASSOCIATION's failure to obtain an affirmative judicial resolution of the District's Concerns; or

D. By mutual written agreement of the PARTIES.

Section 7. Notices.

All notices required to be given by this Agreement shall be in writing and hand delivered or delivered via certified or registered U.S. Mail to the following representatives of the DISTRICT, the ASSOCIATION, and ESCROW AGENT:

As to DISTRICT:

INDIAN TRAIL IMPROVEMENT DISTRICT
ATTN: Executive Director
13476 61st Street North
West Palm Beach, FL 33412

As to ASSOCIATION:

SANTA ROSA HOME-OWNERS ASSOCIATION, INC.
c/o Joseph Kuharcik, Esq.
1211 Plaza Circle
Singer Island, Florida 33404

As to ESCROW AGENT

Mary M. Viator, Esq., District Legal Counsel
Caldwell Pacetti Edwards Schoech & Viator LLP
1555 Palm Beach Lakes Boulevard, Suite 1200
West Palm Beach, Florida 33401

Section 8. Governing Law.

The laws of the State of Florida shall govern this Agreement and venue of any action shall be in Palm Beach County, Florida.

Section 9. Miscellaneous.

A. Any term used in this Agreement will have the same meaning as indicated in the Contract Documents.

B. This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between ASSOCIATION and DISTRICT made with respect to the matters herein contained.

C. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of the Agreement be waived by either PARTY, unless such additions, alteration, variations or waivers are expressed in writing and duly signed.

D. No assignment by a PARTY hereto of any rights under or interests in the Contract will be binding on another PARTY hereto without the written consent of the PARTY sought to be bound. unless specifically stated to the contrary in any written

consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

E. The covenants and agreements contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the PARTIES hereto and upon their respective legal representatives, heirs, executors, administrators, assigns and successors in interest.

F. In the event that any section, paragraph, sentence, clause or provision hereof is held invalid by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Agreement.

G. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 10. Effective Date.

This Agreement shall become effective upon its execution by the last party

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereafter written.

Executed by the **DISTRICT** this 22^d day of JANUARY, 2020.

[DISTRICT SEAL]



INDIAN TRAIL IMPROVEMENT DISTRICT, an independent special district of the State of Florida

By: Betty Argue
Betty Argue
Its: President

ATTEST:


Mary M. Viator

Mary M. Viator
Secretary

Executed by ASSOCIATION this 4TH day of December 2019.

**SANTA ROSA HOME-OWNERS
ASSOCIATION, INC.**, a Florida corporation
not-of-profit

[Corporate Seal]

By: 
[Name Signed]

S. Riccobono
[Name Printed]

Its: _____ President

