

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Joint Use Agreement for Stormwater Facilities for County Road 419  
Phase II with Live Oak Reserve, Ltd.

**DEPARTMENT:** PUBLIC WORKS **DIVISION:** ENGINEERING

**AUTHORIZED BY:** W. Gary Johnson **CONTACT:** Kathleen Myer, P.E. EXT. 5664  
W. Gary Johnson, P.E., Director Jerry McCollum, P.E., County Engineer

<b>Agenda Date</b> <u>10-14-03</u>	<b>Regular</b> <input type="checkbox"/>	<b>Consent</b> <input checked="" type="checkbox"/>	<b>Work Session</b> <input type="checkbox"/>	<b>Briefing</b> <input type="checkbox"/>
	<b>Public Hearing – 1:30</b> <input type="checkbox"/>		<b>Public Hearing – 7:00</b> <input type="checkbox"/>	

**MOTION / RECOMMENDATION:**

Approve and authorize the Chairman to execute the Joint Use Agreement for Stormwater Facilities for County Road 419, Phase II with Live Oak Reserve, Ltd.

**BACKGROUND:**

This Joint Use Agreement for Stormwater Facilities for County Road 419, Phase II, conveys to the County, at no cost, the Retention Pond Area for use by the County for drainage of County Road 419 as outlined in the Richland Seminole Ranch, Ltd. / Seminole County Joint Facilitation of Public Infrastructure Agreement approved and executed on April 22, 1997 and recorded in Book 229, Page 0261 of the Board of County Commission Records.

District 1 - Commissioner Maloy

Attachment: Joint Use Agreement

<b>Reviewed by:</b> <u>SK</u>
<b>Co Atty:</b> <u>SK</u>
<b>DFS:</b> _____
<b>Other:</b> _____
<b>DCM:</b> <u>SK</u>
<b>CM:</b> <u>SK</u>
<b>File No.</b> <u>CPWE01</u>

**JOINT USE AGREEMENT FOR STORMWATER FACILITIES FOR  
COUNTY ROAD 419 PHASE II**

**THIS JOINT USE AGREEMENT FOR STORMWATER FACILITIES FOR COUNTY ROAD 419 PHASE II** ("Agreement") is made this 17<sup>th</sup> day of July, 2003, by LIVE OAK RESERVE, LTD., a Florida limited partnership, whose address is One North Clematis Street, Suite 305, West Palm Beach, Florida 33401 ("Owner") in favor of SEMINOLE COUNTY, FLORIDA, a political subdivision of the State of Florida, whose address is 1101 East First Street, Sanford, Florida 32771 ("County").

**RECITALS:**

A. Owner is the owner of certain real property located in Seminole County, Florida within the development generally referred to and identified as the Live Oak Reserve Phase II, which real property is more particularly described on **Exhibit "A"** attached hereto and incorporated herein ("Retention Pond Area").

B. The Retention Pond Area lies to the south of and is adjacent to County Road 419.

C. Owner has previously conveyed to County certain real property lying between the Owner's property and the currently exiting right-of-way of County Road 419 ("ROW Parcel") for use by the County in connection with its right-of-way expansion project for County Road 419("Project").

D. Simultaneously with the execution of this Agreement, Owner has conveyed to County the Retention Pond Area for use by the County for drainage of County Road 419.

**NOW, THEREFORE**, in consideration of the sum of Ten and no/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Recitals**. The foregoing recitals are acknowledged to be true and correct and by this reference are hereby incorporated into this Agreement as if fully set forth herein.

2. **Grant of Rights**. Owner has conveyed the Retention Pond Area to County to permit County to operate, maintain, repair and replace a single, combined stormwater pond extending across and upon the Retention Pond Area with capacity to serve the water quality (pollution abatement) and peak attenuation (flood storage) requirements associated with C.R. 419 (the "Pond").

3. **Reservation of Rights**. Owner reserves to itself the right to utilize the Retention Pond Area, to the extent not utilized by County for C.R. 419, for the drainage of Live Oak Reserve.

4. **Construction and Maintenance of Pond**. County acknowledges that the Pond has been designed, engineered, permitted and constructed by Owner in accordance with all construction plans and pursuant to the permit issued by St. John's River Water Management

District, Permit No. \_\_\_\_\_ ("Pond Permit"). Upon execution of this Agreement, all responsibility for the maintenance of the Pond shall be assumed by County.

5. Use of Pond Rights. The use of the Pond by County and/or Owner shall be in accordance with all rules and regulations of, and pursuant to all permits issued by, any applicable governmental agencies. The rights granted in favor of Owner and County pursuant to this Agreement shall include the right in favor of Owner and County to enter upon property of County or Owner, respectively, located within one hundred feet (100') of the Retention Pond Area, respectively, only to the extent reasonably necessary to allow Owner and County to fully enjoy the rights granted pursuant to this Agreement.

6. Covenants Running with the Land. This Agreement, and the rights and interests created herein, runs with the land and shall be binding upon and inuring to the benefit of the parties hereto and their respective successors and assigns.

7. Rights Reserved and Termination of Agreement. The rights granted herein are non-exclusive in nature and are subject to all matters of record; provided, however, that each party hereto hereby represents and warrants that there is no matter of record affecting such party's property that would prevent or materially interfere with the exercise of the easement rights granted herein in favor of the other party. In addition, each party hereto hereby reserves the right to, at its sole cost and expense, modify, reconfigure, alter or relocated any portion of the Pond located upon its property, provided, however, that any such modification, reconfiguration, alteration or relocated shall not impede the other party's drainage flows or interfere with the other party's use of the Pond.

8. Construction Liens. The County shall not suffer or permit any construction liens to be filed against any property of the Owner and, in the event of any such construction lien attaching, shall immediately have same removed. If the County causes or allows any construction liens to be filed against property of the Owner, and, thereafter, fails to remove same within thirty (30) days of actual notice that said lien has been filed, then the Owner, at its election, may pay and satisfy the same, or transfer same to other security, and in such event the County shall reimburse to the Owner any and all sums so paid, including interest at the highest rate allowed by Florida law accruing from the date of payment of the lien amount and including all reasonable costs and expenses incurred in connection therewith, including attorneys', paralegals' and other professionals' fees.

9. Liability and Insurance. The Owner does not assume any responsibility or liability for the acts or omissions of the County. Neither party hereto shall be deemed an employee, agent or servant of the other. The County shall maintain a reasonable amount of insurance or a self insurance program meeting the requirements of Florida law to provide liability coverage for property damage, bodily injury and death.

10. General Provisions. The parties further agree as to the following general provisions:

(a) Captions and Applicable Law. The paragraph and subparagraph captions included herein are for reference only and shall not amend, modify or be used to interpret or

construe the meaning or intent of the parties as to any of the terms and provisions hereof. This Agreement shall be governed, enforced and construed in accordance with the laws of the State of Florida. If any provisions of this Agreement or the application thereof shall be held to be invalid or unenforceable in a court of law, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall otherwise remain valid and enforceable to the fullest extent permitted by law.

(b) Legal Proceedings. In the event that either party hereto hires an attorney to enforce any term of this Agreement, the party prevailing in said dispute, enforcement action or legal proceeding shall be entitled to recover reasonable attorneys', paralegals' and other professionals' fees (including those incurred on any re-hearing or appeal) and cost incurred incidental thereto from the party not prevailing in said legal proceedings.

(c) Enforcement and Remedies. If either party hereto fails to perform or breaches any obligation, requirement, duty or covenant contained herein, the other non-defaulting party shall have the right, at its option, in addition to any of its other rights, privileges or remedies otherwise stated elsewhere herein to (i) bring an action for the recovery of actual damages (not including punitive, consequential or incidental loss or damage) in a court of competent jurisdiction, and/or (ii) bring an action for specific performance in a court of competent jurisdiction. The failure to enforce any of the terms or provisions of this Agreement, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation occurring prior to or subsequent thereto.

(d) Entire Agreement, Modification or Termination. This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof. The terms and provisions of this Agreement may be modified or terminated only by a written instrument signed by the parties hereto. This Agreement may be signed in counterparts each of which shall be taken together to constitute but one document.

(e) Notices. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are actually received, whether same are personally delivered, transmitted electronically (i.e. telecopier device with verification receipt capability) or sent by United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or sent by Federal Express or other overnight delivery service from which a receipt may be obtained evidencing the date and time delivery was made, and addressed as follows:

To County at the following address:

Seminole County Engineering  
520 West Lake Mary Boulevard  
Sanford, Florida 32773  
Attention: County Engineer  
Telephone: (407) 665-5600 (for verification of telecopy only)  
Telecopy: (407) 665-5789

With a copy to:

County Attorney's office  
1101 East First Street  
Sanford, Florida 32771  
Attention: Stephen P. Lee  
Telephone: (407) 665-5736 (for verification of telecopy only)  
Telecopy: (407) 665-5749

To the Owner at the following address:

Live Oak Reserve, Ltd.  
One North Clematis Street, Suite 305  
West Palm Beach, Florida 33401  
Attention: Brian Kosoy  
Telephone: (561) 835-1810  
Telecopy: (561) 833-4118

With copy to:

1750 West Broadway Street  
Suite 118  
Oviedo, Florida 32765  
Attention: Richard Jerman  
Telephone: (407) 971-1010  
Telecopy: (407) 971-1490

And to:

Broad and Cassel  
7777 Glades Road, Suite 300  
Boca Raton, Florida 33434  
Attention: Richard B. MacFarland, Esquire  
Telephone: (561) 483-7000  
Telecopy: (561) 483-7321

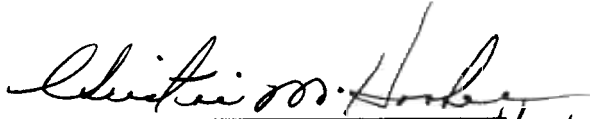
or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

**[INTENTIONALLY BLANK]**


IN WITNESS WHEREOF, Owner and County have executed this Agreement and affixed their seals the day and year first above written.

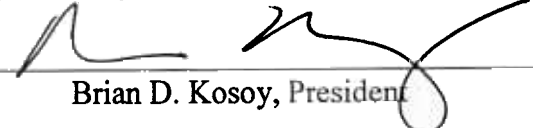
**“OWNER”**

LIVE OAK RESERVE LTD., a Florida limited partnership

  
Print Name: Christine M. Hooker

By: STERLING LIVE OAK, INC., a Florida corporation, general partner

  
Print Name: SARAH J. HALL

By:   
Brian D. Kosoy, President

**ATTEST:**

**“COUNTY”**

BOARD OF COUNTY COMMISSIONERS,  
SEMINOLE COUNTY, FLORIDA

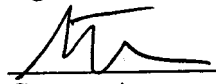
\_\_\_\_\_  
MARYANNE MORSE  
Clerk to the Board of County  
Commissioners of Seminole County,  
Florida

By: \_\_\_\_\_  
DARYL G. MCLAIN  
Chairman

Date \_\_\_\_\_

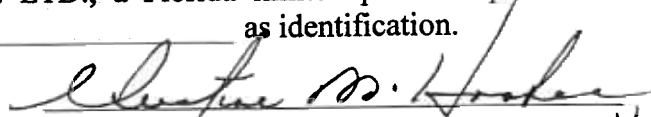
For the use and reliance of Seminole  
County only. Approve as to form and  
legal sufficiency.

As authorized for execution by the Board of  
County Commissioners at its \_\_\_\_\_  
2003, regular meeting.

  
\_\_\_\_\_  
County Attorney

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of July, 2003, by Brian D. Kosoy as President of STERLING LIVE OAK, INC., a Florida corporation, the general partner of LIVE OAK RESERVE LTD., a Florida limited partnership. He is personally known to me ~~or has produced~~ \_\_\_\_\_ as identification.

  
Notary Public  
Print Name: Christine M. Hooker  
State of Florida  
My Commission Expires: 12-11-04



Christine M. Hooker  
MY COMMISSION # CC985776 EXPIRES  
December 11, 2004  
BONDED THRU TROY FAIR INSURANCE, INC.

COUNTY ROAD NO. 419 PHASE II  
PARCEL NO. 800A  
WATER RETENTION AREA

TAX PARCEL I.D. #: 20-21-32-300-0160-0000  
OWNER'S NAME: LIVE OAK RESERVE, LTD.

A PARCEL OF LAND LYING IN SECTION 20, TOWNSHIP 21 SOUTH, RANGE 32 EAST, BEING A PORTION OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3619, PAGE 1090, PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

COMMENCE AT THE WEST QUARTER CORNER OF SAID SECTION 20 FOR A POINT OF REFERENCE; THENCE RUN NORTH 00°18'03" WEST, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 20, A DISTANCE OF 95.95 FEET TO A POINT LYING ON THE EXISTING SOUTHERLY RIGHT-OF-WAY LINE OF COUNTY ROAD NO. 419 (FORMERLY STATE ROAD NO. 419 AND NO. 203), AS PER STATE OF FLORIDA ROAD DEPARTMENT RIGHT-OF-WAY MAP, SECTION 7707; THENCE RUN SOUTH 73°04'30" EAST, ALONG SAID EXISTING SOUTHERLY RIGHT-OF-WAY LINE, 1489.88 FEET TO THE NORTHWEST CORNER OF THE LANDS DESCRIBED IN SAID OFFICIAL RECORDS BOOK 3619, PAGE 1090 AND THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 73°04'30" EAST, ALONG SAID EXISTING SOUTHERLY RIGHT-OF-WAY LINE, 840.21 FEET; THENCE RUN SOUTH 16°55'30" WEST, 85.54 FEET; THENCE RUN SOUTH 77°36'17" WEST, 253.04 FEET; THENCE RUN NORTH 73°04'30" WEST, 195.15 FEET; THENCE RUN SOUTH 17°50'54" EAST, 22.55 FEET; THENCE RUN SOUTH 71°40'08" WEST, 15.00 FEET; THENCE RUN NORTH 17°50'54" WEST, 33.09 FEET; THENCE RUN NORTH 73°04'30" WEST, 50.81 FEET; THENCE RUN SOUTH 72°09'09" WEST, 231.53 FEET TO A POINT LYING ON THE WEST LINE OF THE AFORESAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3619, PAGE 1060; THENCE RUN NORTH 08°53'14" WEST, ALONG SAID WEST LINE, 379.35 FEET TO THE POINT OF BEGINNING;

CONTAINING 3.877 ACRES, MORE OR LESS

FOR SKETCH OF DESCRIPTION, SEE SHEET 4 OF 6 OF ASSOCIATED RIGHT-OF-WAY MAP (NOTE: LEGAL DESCRIPTION IS NOT A SURVEY).

WE HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION IS IN COMPLIANCE WITH AND MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY CHAPTER 61G17-6 F.A.C., PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

THIS LEGAL DESCRIPTION PREPARED UNDER THE DIRECTION OF:

DAVID A. WHITE, P.S.M. - NO. 4044  
PROFESSIONAL ENGINEERING CONSULTANTS, INC  
200 EAST ROBINSON STREET - SUITE 1560  
ORLANDO, FLORIDA 32801  
DATE: MARCH 1, 2001

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