

LANDSCAPE BUFFER AGREEMENT
BETWEEN PASCO COUNTY AND
SOUTHERN OAKS OF PASCO HOMEOWNERS' ASSOCIATION, INC.

THIS AGREEMENT is made and entered into, by and between PASCO COUNTY, FLORIDA, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners (hereinafter referred to as COUNTY), and **SOUTHERN OAKS OF PASCO HOMEOWNERS' ASSOCIATION, INC.**, a Florida not-for-profit corporation, c/o Sentry Management, Inc., 25400 U.S. Highway 19 North, #164, Clearwater, FL 33763 (hereinafter referred to as SOUTHERN OAKS).

W I T N E S S E T H:

WHEREAS, incident to construction of Starkey Boulevard from S. R. 54 to Alico Pass (Work Order No. C-4837.00), the COUNTY will furnish and plant a landscape buffer for approximately eighteen hundred and ninety (1,890) feet (hereinafter referred to as IMPROVEMENTS) on or within property owned by SOUTHERN OAKS; and

WHEREAS, in furtherance of the construction project involving Starkey Boulevard and the benefit to nearby residences, the COUNTY has determined it to be in the public's interest to cause the prompt and economical furnishing and planting of the IMPROVEMENTS in such area; and

WHEREAS, in return for access to SOUTHERN OAKS' property the COUNTY has agreed to bear the cost of furnishing and planting the IMPROVEMENTS; and

WHEREAS, the parties are desirous of entering into this agreement for the purposes stated above.

NOW THEREFORE, in consideration of the premises set forth hereinabove, the terms of which are incorporated herein, and the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. This agreement is intended to set forth the terms and conditions of the participation of the parties hereto in the furnishing and planting of the IMPROVEMENTS. All terms and conditions of this agreement shall be interpreted in a manner consistent with, and in furtherance of, the purposes as set forth herein.

2. The IMPROVEMENTS will be planted within SOUTHERN OAKS' property, generally within five (5) feet of the east property line adjacent to the new Starkey Boulevard alignment as reflected on Exhibit "A", which is attached hereto and incorporated herein by reference. In consideration of such IMPROVEMENTS, SOUTHERN OAKS shall execute a separate Right-of-Entry agreement with the COUNTY for the planting of the IMPROVEMENTS within its property.

3. The COUNTY has received an estimate of cost from its contractor for the Starkey Boulevard Project, Central Florida Excavation and Fill, Inc. (hereinafter referred to as Contractor), of about \$11,150.00 for the IMPROVEMENTS. The parties hereto find the contractor's quote reasonable.

4. Accordingly, the COUNTY will, subject to approval and execution of this agreement and the Right-of-Entry agreement by the parties hereto, enter into a change order to the Starkey Boulevard Project from S.R. 54 to Alico Pass (W.O. No. C-4837.00) with the contractor for the furnishing and planting of the IMPROVEMENTS.

5. SOUTHERN OAKS agrees to the scope of work for the IMPROVEMENTS as defined herein. The COUNTY, in turn, agrees to be responsible for completing the work involved in the furnishing and planting of the IMPROVEMENTS.

6. The parties hereto further agree that the COUNTY, in furnishing and planting the IMPROVEMENTS, shall not assume any responsibility for maintaining the IMPROVEMENTS or the surrounding areas. All maintenance of the IMPROVEMENTS and surrounding areas remains with SOUTHERN OAKS. If SOUTHERN OAKS no longer exists, refuses to maintain, or cannot maintain the IMPROVEMENTS, the responsibility shall revert to the fee simple owners, or their successors or assigns, on whose property the IMPROVEMENTS are being planted, or next to whose property the IMPROVEMENTS are being planted.

7. Upon completion of the IMPROVEMENTS and inspection and approval by the COUNTY, the COUNTY shall turn over all ownership, control, and maintenance of the IMPROVEMENTS to SOUTHERN OAKS. At no time shall the COUNTY have any ownership, control, or maintenance responsibilities with regard to the IMPROVEMENTS. The parties hereto agree that the COUNTY shall

not be responsible to conduct any further inspections of the IMPROVEMENTS other than inspections routinely made by the COUNTY.

8. SOUTHERN OAKS, its successors and assigns, hereby agree to maintain all IMPROVEMENTS and surrounding areas in a safe and clean condition for the life of the IMPROVEMENTS, and SOUTHERN OAKS agrees that the COUNTY in furnishing and planting the IMPROVEMENTS is not assuming any maintenance or liability for the IMPROVEMENTS or the surrounding areas. SOUTHERN OAKS' duties to maintain shall begin at the time the IMPROVEMENTS are furnished and planted.

9. The term of this agreement shall begin at the time of execution of this agreement by the parties, and shall continue for the life of the IMPROVEMENTS.

10. SOUTHERN OAKS hereby waives all claims against the COUNTY for compensation for loss or damage of any kind sustained for any reason as a result of the COUNTY'S furnishing and planting of the IMPROVEMENTS or this agreement, except as provided in paragraph 12.

11. SOUTHERN OAKS shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or damages to the property, which may arise from or in connection with SOUTHERN OAKS' use and maintenance of the IMPROVEMENTS. The costs of such insurance shall be borne by SOUTHERN OAKS.

12. SOUTHERN OAKS agrees to indemnify, defend, and hold harmless the COUNTY and all its agents and employees, from any claim, loss, damage, cost, charge, or expense (including but not limited to, all fees and charges of attorneys and other professionals and all court or other dispute resolution costs) arising out of or resulting from any act, action, neglect, or omission during the performance of the COUNTY'S responsibilities under this agreement, whether direct or indirect, and whether or not due to or caused by negligence of the COUNTY or any of its agents or employees. SOUTHERN OAKS shall not be liable under this Article for damages arising out of the injury or damage to persons or property directly caused or resulting from the sole negligence of the COUNTY or any of its agents or employees that may arise during the furnishing or planting of the IMPROVEMENTS.

SOUTHERN OAKS' obligation to defend and indemnify the COUNTY shall not be excused because of SOUTHERN OAKS' inability to evaluate liability or because SOUTHERN OAKS evaluates liability and determines that it is not negligent. Only a final adjudication or judgment finding the COUNTY solely negligent shall excuse performance of this Article by SOUTHERN OAKS. If a judgment finding the COUNTY solely negligent is appealed and the finding of sole negligence is reversed, SOUTHERN OAKS will be obligated to indemnify the COUNTY for the cost of all appeals. SOUTHERN OAKS shall pay all costs and fees related to this obligation and its enforcement by the COUNTY.

This Article shall also apply to any claims brought against the COUNTY by any agent or employee of SOUTHERN OAKS or by any member of SOUTHERN OAKS or any property owner within SOUTHERN OAKS. In consideration of SOUTHERN OAKS' indemnity pursuant to this Article, the COUNTY has tendered ten and 00/100 dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged by SOUTHERN OAKS.

13. This agreement shall be binding upon the parties, their respective successors and assigns, and shall inure to the benefit of the parties, their successors and assigns.

14. In case any one or more of the provisions contained in this agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any of the provisions hereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, unless such provision results in a frustration of the purpose of this agreement or the failure of consideration.

15. This agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein.

16. Neither this agreement, nor any provision hereof, may be waived, modified, amended, discharged, or terminated except as authorized by law pursuant to an instrument in writing signed by all parties.

17. The COUNTY may, with or without cause, and upon thirty (30) days written notice terminate this agreement.

18. This agreement may be executed in multiple counterparts, all of which taken together shall constitute one (1) document.

19. This agreement shall be governed by and construed by the laws of the State of Florida and venue for any action arising out of or relating to this agreement shall be in Pasco County, Florida.

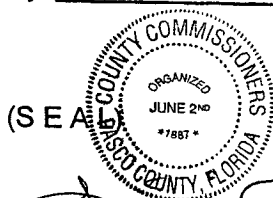
20. Each party represents to the other that the party has authority under all applicable laws to enter into this agreement containing such covenants and provisions as contained in this agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives on this 27th day of April 2004.

PASCO COUNTY, FLORIDA, a political subdivision of the State of Florida,

ATTEST: _____

By: _____



Jed Pittman
Jed Pittman, Clerk

Peter A. Altman, Chairman

Dated: April 27, 2004 **APPROVED**

APR 27 2004

SOUTHERN OAKS OF PASCO HOMEOWNERS' ASSOCIATION, INC., a Florida not-for-profit corporation.

WITNESS: W. H. Coggin

WITNESS: Shirley Fletcher

By: Janet M. Malafronte

JANET M. MALAFRONTE

Print Name

PRESIDENT

Title

STATE OF FLORIDA)
COUNTY OF PASCO)

The foregoing instrument was acknowledged before me this 25 day of March 2004,
by Janet M. Malatronte, of SOUTHERN OAKS OF PASCO
HOMEOWNERS' ASSOCIATION, INC., a Florida not-for-profit corporation, who is personally known to me
(or has produced _____ as identification).

Signature: Sheri Fletcher

Printed Name: Sheri Fletcher

Notary Public

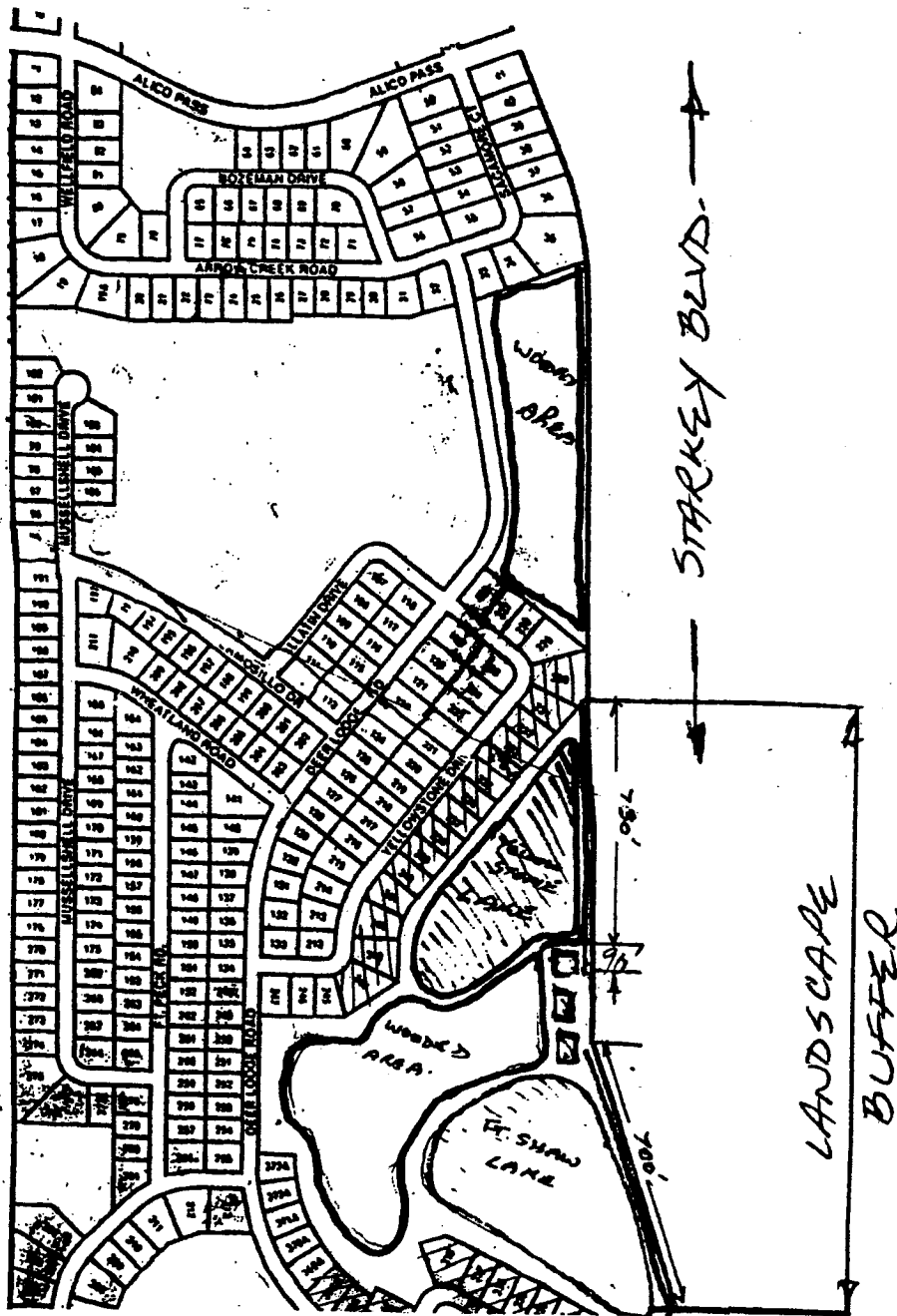
Serial Number (if any): DD222269

My Commission Expires: 6-14-07



APPROVED AS TO LEGAL FORM AND SUFFICIENCY
OFFICE OF THE PASCO COUNTY ATTORNEY

John M. Ryan
ATTORNEY



SOUTHERN OAKS
LANDSCAPE BUFFER AGREEMENT
EXHIBIT A