

## **SETTLEMENT AND RELEASE AGREEMENT**

This SETTLEMENT AND RELEASE AGREEMENT (“Agreement”) is made as of the last date signed below (“Effective Date”) between (i), MICHAEL AND JEANNIE SOLE (“Soles”) and (ii) INDIAN RIVER COUNTY BOARD OF COMMISSIONERS, individually (“County”) may collectively referred to as the “Parties”.

### **RECITALS**

- A. Wherein the parties litigated the issue as it pertains to declaratory relief and injunctive relief over an open space agreement in the Case Styled, Michael and Jeannie Sole v. Indian River County Board of Commissioners, In the Circuit Court of the Nineteenth Judicial Circuit, In and For Indian River County, Florida under Case No. 312023CA001115 (the “Litigation”);
- B. Wherein the Court in the Litigation entered an Amended Final Summary Judgment in Favor of Plaintiffs that the Court would not order specific measures that the County must undertake in order to fulfill the terms of the injunction and judgment but directed the County and the Soles to confer as the County develops its permanent plan to restrict, limit, and control access to the Open Space, consistent with the terms of the Open Space Agreement, in an effort to avoid any future disputes over the County’s remedy and whether it conforms to the Open Space Agreement (“Amended Final Summary Judgment Terms”);
- C. Wherein the Parties hereby agree that this Settlement and Release Agreement does not in any way alter, modify, or restrict the enforceability of the existing Amended Final Summary Judgment (the “Judgment”);
- D. Wherein the Parties hereby agree that this Settlement and Release Agreement shall resolve the pending Motion for Attorney’s Fees filed by the Soles;
- E. The Parties now wish to forever resolve and settle the above-mentioned Amended Final Summary Judgment Terms on the terms and conditions set forth herein.
- F. Upon its execution, this Agreement represents the complete satisfaction of any and all obligations of both Parties in regard to the service that is the subject matter of the above-mentioned Amended Final Summary Judgment Terms.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge by Parties, the Parties acknowledge and agree as follows:

1. **Recitals.** The Parties agree that the foregoing Recitals are true, correct, and are incorporated herein by reference.

2. **Settlement Terms (Non-Monetary).** Subject to the terms and conditions of this Agreement, the County, within 90 days from execution of this Agreement, shall install a locked fence West of the Open Space Area consistent with the existing fencing installed at the Conservation Area. Any non-county staff must be escorted if entering the Open Space Area. The County does not have to provide any notice for such entries, however, the Soles may address the issue of violators using any other means available to them under the law. The County agrees to comply with the Open Space Agreement by planting and maintaining native plants (trees, bushes) and grasses that are consistent with the Open Space Agreement.

In addition, the Soles agree that this Agreement will not bind future owners, and the Parties agree that this Agreement does not change nor modify any of the terms of the Open Space Agreement nor the Judgment.

Upon mutual agreement by Grantee and Grantor of the Open Space Agreement, an alternative method of limiting unfettered public access may be employed.

The Soles shall withdraw their Motion for Attorney's Fees and Costs as filed in the Litigation within 5 days of execution of this Agreement.

In exchange for the performance of the terms above with regard to the Amended Final Summary Judgment Terms as defined within this Agreement - this shall serve as sufficient consideration for the Agreement.

3. **No Admission of Liability.** Nothing contained in this Agreement shall be construed to be an admission of fault and/or liability of any Party. The Parties agree that each Party is entering into this Agreement to avoid the expense and uncertainty of litigation.
4. **Entire Agreement.** This Agreement contains the entire understanding of the Parties with respect to its subject matter and may only be modified or waived by an instrument in writing signed by both Parties.
5. **Governing Law.** This Agreement, including its interpretation and enforcement, shall be governed only by the laws of the State of Florida and no other laws.
6. **Venue/Jurisdiction.** The Parties agree that any dispute arising from or relating to this Agreement shall be brought in Indian River County, Florida which retains jurisdiction to hear the matter, with such court serving as the sole and exclusive venue/jurisdiction for all disputes arising from or relating to this Agreement. Parties acknowledge that this paragraph is a mandatory jurisdiction and venue provision.
7. **Severable Covenants.** If any part of this Agreement is held to be invalid or unenforceable for any reason by a court of competent jurisdiction, the remained of this Agreement shall continue in full force and effect.

8. **Counterparts.** This Agreement may be executed in counterparts, via email, facsimile or electronic transmission, and each such counterpart shall be deemed an original, but all of which together shall constitute one in the same instrument.
9. **Captions and Headings.** The headings and captions in this Agreement are inserted as a matter of convenience and for reference and shall not be construed to be a substantive part of this Agreement and shall not in any way defines, limit, expand or affect the scope or meaning of any provision of this Agreement.
10. **Good Faith Cooperation.** The Parties hereto covenant, warrant and represent to each other Party that he will act in good faith, act in due diligence, provide his complete cooperation and that he will do such other and further actions, including without limitation, the execution of any documents or instruments which are reasonable or may be necessary, helpful or convenient in carrying out the purposes and intent of this Agreement. Said covenants are mutual and dependent.
11. **Merger and Non-Reliance.** All prior representations, promises, or inducements, whether oral or written, arising from or relating to the subject matter of this Agreement are hereby merged into the terms of this Agreement, which terms shall supersede any such prior representations, promises, or inducements. Except for the express representations contained in this Agreement, neither Party has relied on any statements, representations, promises, or inducements of the other Party.
12. **Non-Waiver.** No course or dealing, course of performance, or failure of any Party to strictly enforce any term, right, or condition of this Agreement or any other document prepared in connection with this Agreement shall be construed as a waiver of any term, right, or condition.
13. **Attorney Fees.** Each Party shall bear its own attorney fees and costs incurred in connection with the negotiation and preparation of this Agreement and the above-mentioned Litigation. If either Party shall bring an action for enforcement for breach of this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs at all trial and appellate levels from the non-prevailing party in such action including any paralegal fees or costs.
14. **Full Settlement.** This Agreement is intended to be a full and complete settlement of any and all actual and potential disputes, rights, claims, and causes of action (not including the terms of this Agreement) which either Party has or may have against the other arising from or relating to the above-mentioned Litigation and the Amended Final Summary Judgment Terms.

15. **Negotiation of Agreement.** The terms of this Agreement were prepared without any fraud, duress, undue influence, or coercion of any kind exerted by either Parties upon the other, and the execution and delivery of this Agreement is the free and voluntary act of each Party hereto. Each Party acknowledges that it has received the opportunity to consult such legal, tax, or other advisors prior to execution of this Agreement as such Party deems necessary.
16. **Draftsmanship.** Each Party has participated substantially in the negotiation and drafting of this Agreement and any ambiguity shall not be more strictly construed against either Party. The Parties waive any legal standard or convention of interpretation to the contrary and wish this Agreement to be interpreted neutrally.
17. **Amendment.** No amendment, modification, extension, or waiver of any term, condition, or provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by each of the Parties.
18. **Authority.** Each Party represents and warrants to the other that (i) it has full capacity and authority to enter into this Agreement and perform its respective obligations under this Agreement, without any required consent or approval of any other person or entity, (ii) it has not assigned, conveyed, or encumbered to any third party any of the rights, claims, interests or causes of action which are the subject matter of this Agreement. Each Party agrees to indemnify, defend, and hold harmless the other Party from and against any such claims of third parties to the contrary.
19. **Notices.** The Parties agree that any notice required by this Agreement shall be by email and mail to the Party's respective counsel.
20. **Enforceability.** Both Parties expressly waive any defense to this Agreement as to enforceability.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

**MICHAEL AND JEANNIE SOLE**

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

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

**INDIAN RIVER COUNTY BOARD OF  
COMMISSIONERS**

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

Date: \_\_\_\_\_

Joseph E. Flescher, Chair

ATTEST: Ryan L. Butler, Clerk of  
Court and Comptroller

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

Deputy Clerk

Approved as to form and legal sufficiency:

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

Jennifer W. Shuler, County Attorney