

Return to:

Tax Parcel ID No.

**USE AGREEMENT BETWEEN <DEVELOPER>, AND <HOMEOWNERS  
ASSOCIATION>, AND ORANGE COUNTY**

**THIS AGREEMENT** (the “Agreement”) is entered into by and among \_\_\_\_\_, a <state and type of entity> (the “Developer”) with a principal place of business at \_\_\_\_\_; \_\_\_\_\_ **Homeowners Association Inc.**, a Florida not-for-profit corporation (the “Association”) with a principal place of business at \_\_\_\_\_; and **Orange County**, a charter county and political subdivision of the State of Florida (the “County”) with a mailing address at P.O. Box 1393, Orlando, FL 32802-1393.

**RECITALS**

**WHEREAS**, Developer is constructing a single-family residential project on a certain parcel of real property, as is more particularly described in **Exhibit “A”**, attached hereto and incorporated herein by this reference (the “Property”), located in the unincorporated area of Orange County; and

**WHEREAS**, Association, whose members are or will be the owners of the Property, has been formed to assure the perpetual and continuous maintenance of certain common property and entrance way areas located on and adjacent to the Property; and

**WHEREAS**, Developer and Association desire to obtain a Right-of-Way Utilization Permit (the “Permit”) from County, whereby Developer and Association will be allowed to install, construct, and maintain the following improvements: \_\_\_\_\_ (the “Improvement(s)”) in the road, median, parkway, and/or drainage areas located within those

areas which have been or will be dedicated to public use (collectively, the “Dedicated Areas”), said Dedicated Areas being within the boundaries of or adjacent to the Property, as more particularly described in the attached and incorporated **Exhibit “B”**; and

**WHEREAS**, the work associated with the Improvement(s) is detailed in **Exhibit “C”**, attached hereto and incorporated herein; and

**WHEREAS**, County requires that Developer and Association undertake certain commitments and covenants to assure the perpetual and continuous maintenance of any such Improvement(s).

**NOW, THEREFORE**, in consideration of the foregoing and of the terms and conditions set forth herein, the parties agree as follows:

1. **RECITALS**. The foregoing recitals are true and correct and form a material part of this Agreement.
2. **RIGHT-OF-WAY UTILIZATION PERMIT**. Any such Permit issued by County to Developer and/or Association shall be subject to the terms of this Agreement. Developer and/or Association shall not, while installing or maintaining the Improvement(s), damage or disturb any portion of the Dedicated Areas without prior written approval by County and County’s prior written approval of a plan to restore the Dedicated Areas. Nothing contained herein or by virtue of the issuance of the Permit shall give or grant Developer and/or Association any ownership rights to any portion of the Dedicated Areas.
3. **IMPROVEMENTS**. Any improvement that, in County’s sole opinion, may impede the functional operation of planned, proposed, or existing underdrains shall not be

permitted under this Agreement. The Improvement(s) shall be established and maintained in such a manner as will not interfere with the use of the Dedicated Areas by the public nor create a safety hazard on such Dedicated Areas. If County determines that the Improvements do present a safety hazard, then Developer and/or Association, at its sole expense and at no cost to County, shall relocate the Improvements in such a manner as to eliminate the hazard, to the satisfaction of County.

4. **REMOVAL/RELOCATION.** If, in the sole opinion of County, the Improvement(s) interferes with any construction, reconstruction, alteration, improvement(s), or maintenance which County desires to perform on, around, or under the Dedicated Areas, or if County desires removal for any reason, then written notice of such shall be sent to Developer and Association. Developer and Association shall remove or relocate the Improvement(s) as requested by County, and to County's satisfaction, within thirty (30) days of said notice or, in the event such notice is returned as undeliverable to Developer and Association's addresses listed above, within thirty (30) days of the first date of publication of legal notice, which publication shall appear in not less than two weekly issues of a newspaper of general circulation in Orange County, Florida. Any such relocation or removal of the Improvement(s) shall be at no cost or expense to County.
5. **INDEMNIFICATION.** To the fullest extent permitted by law, Developer and Association shall defend, indemnify, and hold harmless Orange County from and against all claims, damages, losses, and expenses, including reasonable attorney fees

and costs, arising out of, or resulting from, the performance of their operations under this agreement. Developer and Association shall defend, indemnify, and hold harmless County (and any governmental body or utility authority properly using the Dedicated Areas) from and against all expenses, costs, or claims for any damages to the Improvement(s) which may result from the use of the right-of-way by County or any other governmental body or authority due to maintenance, construction, installation, or other proper use within the Dedicated Areas.

6. **INSURANCE**. Throughout the duration of this Agreement, including the initial period and any extensions thereto, Developer and Association shall obtain and possess:

a) Commercial General Liability coverage, issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, for all operations under this Agreement, including but not limited to Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than \$1,000,000 Combined Single Limits (CSL) or its equivalent per occurrence. Such coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Severability of Interests. The general aggregate limit shall either apply separately to this contract or shall be at least twice the required occurrence limit;

b) Workers' Compensation coverage for all employees with statutory workers' compensation limits, and no less than \$100,000 for each incident of bodily injury or disease for Employers' Liability; and

c) Business automobile liability coverage for all owned, non-owned, and hired vehicles issued on the most recent version of the ISO form as filed for use in Florida, or its equivalent, with limits of not less than \$500,000 per accident. In the event Developer and/or Association does not own automobiles, Developer and/or Association shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the commercial General Liability policy or separate business Auto Liability policy.

Prior to commencing operations under this Agreement, Developer and Association shall provide Certificates of Insurance to County to verify coverage. The name of the development, subdivision, or project in which the Improvement(s) are to be installed and the type and amount of coverage provided, shall be clearly stated on the face of each Certificate of Insurance. The insurance coverage shall name Orange County, Florida as an additional insured, and shall contain a provision which forbids any cancellation, changes or material alterations, or renewal of coverage without providing thirty (30) days prior written notice to County. Developer and Association shall require and ensure that each of its contractors and subcontractors maintains insurance until the completion of their work under any contract associated with this Agreement. Failure of Developer and/or Association to maintain insurance coverage for themselves or for any other person or entity for whom they are responsible, or to ensure that their contractors and subcontractors maintain coverage, shall not relieve Developer or Association of any contractual responsibility, obligation, or liability.

7. **RECORDING.** This Agreement shall be recorded in the Public Records of Orange

County, Florida within thirty (30) days of its execution. Promptly upon execution of this Agreement, Developer shall pay to County an amount equal to the applicable cost of recording this Agreement in the Public Records of Orange County, Florida.

8. **COVENANTS RUNNING WITH THE LAND.** The provisions of this Agreement shall constitute covenants running with the land or an equitable servitude upon the land, as the case may be, applicable to all of the Property described herein or any portion thereof. Furthermore, this Agreement shall be binding on all parties having any right, title, or interest in the Property described herein or any portion thereof, and their heirs, personal representatives, successors, and assigns. Developer and Association declare that the Property described in this Agreement and any portion thereof shall be held, sold, and conveyed subject to the provisions of this Agreement. This Agreement shall inure to the benefit of and be enforceable by County and its respective legal representatives, successors, and assigns.

9. **DURATION.** The provisions, restrictions, and covenants of this Agreement shall run with and bind the land for a period of twenty-five (25) years from the date this Agreement is recorded in the Public Records of Orange County, Florida. Thereafter, this Agreement shall be automatically extended for successive periods of ten (10) years each, unless a written instrument agreeing to revoke said provisions, restrictions, and covenants is approved by a majority of the Orange County Board of County Commissioners and by either (1) Developer and Association, or (2) the then owners of not less than three-fourths of the lots on the Property described herein. No such agreement to revoke shall be effective until said written instrument has been

signed, acknowledged, and recorded in the Public Records of Orange County, Florida. Notwithstanding any of the above provisions, County shall have the right to cancel this Agreement upon thirty (30) days prior written notice to Developer and Association or to all of the owners of said lots. No such cancellation shall be effective until a written instrument has been executed and acknowledged by the Board of County Commissioners and recorded in the Public Records of Orange County, Florida.

10. **AMENDMENT**. The provisions, restrictions, and covenants of this Agreement shall not be modified or amended except in a written instrument approved by a majority of the Orange County Board of County Commissioners and by either (1) Developer and Association or (2) the then owners of not less than three-fourths of the lots on the Property described herein. No such modification or amendment shall be effective until said written instrument has been signed, acknowledged, and recorded in the Public Records of Orange County, Florida.
11. **COMPLIANCE WITH APPLICABLE LAWS**. Developer and Association shall comply with all applicable state laws and County ordinances, including the Orange County Right-of-Way Utilization Regulations.
12. **DISCLAIMER OF COUNTY RESPONSIBILITY**. Nothing contained herein shall create any obligation on the part of County to maintain or participate in the maintenance of the Improvement(s).
13. **EFFECTIVE DATE**. This Agreement shall take effect upon being recorded in the Public Records of Orange County, Florida.

Agreement <Developer>, <HOA>  
Tax Parcel ID No.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.

**COUNTY**

ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

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

**Jerry L. Demings**  
Orange County Mayor

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

ATTEST: Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

Agreement <Developer>, <HOA>  
Tax Parcel ID No.

**DEVELOPER**

<NAME OF DEVELOPER>  
a <state and type of entity>

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

Print Name: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

Print Name: \_\_\_\_\_

**STATE OF** \_\_\_\_\_  
**COUNTY OF** \_\_\_\_\_

The foregoing instrument was acknowledged before me **by means of physical presence / online notarization**, this **(date)** by **(name of member, manager, officer or agent)**, **(title of member, manger, officer or agent)** of **(name of company acknowledging)**, a **(state or place of formation)** limited liability company, on behalf of the corporation, who is personally known to me or has produced **(type of identification)**, as identification.

\_\_\_\_\_  
Signature of person taking acknowledgement

Name typed, printed or stamped: \_\_\_\_\_

Title or rank: \_\_\_\_\_

Agreement <Developer>, <HOA>  
Tax Parcel ID No.

**ASSOCIATION**

<NAME OF HOA>  
Homeowners' Association, Inc.

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

Print name: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

Print Name: \_\_\_\_\_

**STATE OF \_\_\_\_\_**  
**COUNTY OF \_\_\_\_\_**

The foregoing instrument was acknowledged before me **by means of physical presence / online notarization**, this **(date)** by **(name of officer or agent)**, **(title of officer or agent)** of **(name of corporation acknowledging)**, a **(state or place of incorporation)** corporation, on behalf of the corporation, who is personally known to me or has produced **(type of identification)**, as identification.

\_\_\_\_\_  
Signature of person taking acknowledgement

Name typed, printed or stamped: \_\_\_\_\_

Title or rank: \_\_\_\_\_

Agreement <Developer>, <HOA>  
Tax Parcel ID No.

**EXHIBIT "A"**

Legal Description and Sketch of Description for Property

[See attached \_\_\_ page(s)]

Agreement <Developer>, <HOA>  
Tax Parcel ID No.

**EXHIBIT "B"**

Legal description and sketch of description for Dedicated Areas

[See attached \_\_\_ page(s)]

**EXHIBIT “C”**

Detailed description of Improvement(s)

- **SUPPLEMENTAL MAINTENANCE – MOWING OF RIGHT-OF-WAY**
- **SUPPLEMENTAL MAINTENANCE – TRIMMING OF SHRUBS**
- **SUPPLEMENTAL MAINTENANCE – TRIMMING OF PALMS**
- **SUPPLEMENTAL MAINTENANCE – TRIMMING OF TREES**
- **SUPPLEMENTAL MAINTENANCE – AQUATIC**
- **BEAUTIFICATION – MAINTENANCE OF FLORA**
- **BEAUTIFICATION – RIGHT-OF-WAY BANNER**
- **BEAUTIFICATION – POLE BANNER**
- **INSTALL LANDSCAPING – PLANTING OF SHRUBS**
- **INSTALL LANDSCAPING – PLANTING OF PALMS**
- **INSTALL LANDSCAPING – PLANTING OF TREES**
- **INSTALL HARDSCAPE – BRICK PAVERS**
- **INSTALL HARDSCAPE – FOUNTAINS**
- **INSTALL HARDSCAPE – SIDEWALK**
- **INSTALL HARDSCAPE – BENCHES**
- **INSTALL IRRIGATION – RIGHT-OF-WAY**
- **INSTALL IRRIGATION – POND AREAS**
- **INSTALL SIGNAGE – BULLETIN BOARD**
- **INSTALL SIGNAGE – ILLUMINATION**
- **INSTALL SIGNAGE – COMMUNITY**
- **INSTALL SIGNAGE – MONUMENT**
- **INSTALL SIGNAGE – WALL**
- **INSTALL ILLUMINATION**
- **INSTALL PUMPS**
- **PLACEMENT OF MULCH**
- **PLACEMENT OF SOD**