

Prepared by:

Tax parcel ID No:

USE AGREEMENT BETWEEN
<HOMEOWNERS ASSOCIATION> AND ORANGE COUNTY

THIS AGREEMENT (the “Agreement”) is entered into by and between _____, a Florida not-for-profit corporation (the “Association”), with a mailing address at <address> 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, a single-family residential project on a certain parcel of real property (the “Property”), as more particularly described in Exhibit “A,” attached hereto and incorporated herein by this reference, has been constructed and is 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, Association wishes to beautify, and/or perform supplemental maintenance within (the “Improvement(s)”), a County pond or pond tract located within the rights-of-way adjacent to the Property and/or 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 on Exhibit “B” attached hereto and incorporated herein by this reference; and

WHEREAS, Association desires to obtain a Right-of-Way Utilization Permit (the “Permit”) from County, whereby Association will be allowed to install and maintain the Improvement(s), as described in the attached and incorporated Exhibit “C”, within the Dedicated Areas; and

WHEREAS, County requires that Association undertake certain commitments and covenants with respect to the 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 Association shall be subject to the terms of this Agreement. Association shall not, while installing or maintaining any or all of 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 to Association any ownership rights to any portion of the Dedicated Areas.
3. **COORDINATION.** Prior to undertaking any action within the Dedicated Areas,

Association shall coordinate with County by contacting the manager of the Orange County Division of Roads and Drainage at 4200 South John Young Parkway, Building 1, Orlando, FL 32839, and/or by calling the division at 407- 836-7877. Any action, structure, item, modification, installation, or clearing 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 performed, 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 any change(s) made by Association may present a safety hazard, then Association, at its sole expense and at no cost to County, shall relocate or remove such change(s) in such a manner as to eliminate the hazard, to the satisfaction of County.

4. **ADDITIONAL PROVISIONS.** No additional trees, irrigation lines, bushes, plants, benches, litter receptacles, utilities, or any other items or structures shall be permitted within the Dedicated Areas. Any damage to the Dedicated Areas resulting from the installation or maintenance of the Improvement(s) shall be corrected by Association within seven (7) days, including but not limited to ruts caused by mowing equipment or scalping of the berm or slopes. Nothing in this Agreement is intended to nor shall constitute an agreement by County to alter or change its mowing schedule for the Dedicated Areas. As per its usual practices, County may skip a cycle

any time County finds that the Dedicated Areas do not require maintenance at that particular instance. This decision shall be at the sole discretion of County's maintenance crew foreperson.

5. **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, then Association, upon receipt of a written notice from County, shall remove or relocate the Improvement(s) as requested by County and to County's satisfaction within thirty (30) days of receipt of said notice, or 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 the sole expense of Association and at no cost to County.

6. **INDEMNIFICATION.** To the fullest extent permitted by law, Association shall defend, indemnify, and hold harmless 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.

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 other governmental body or authority due to maintenance, construction, installation, or other proper use within the Dedicated Areas.

7. **INSURANCE**. Throughout the duration of this Agreement, including the initial period and any extensions thereto, 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 Association does not own automobiles, 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, 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.

Association shall require all contractors performing work within the County right-of-way to procure and maintain workers' compensation, commercial general liability, business auto liability and contractor's pollution liability coverage. Each party shall be listed as an additional insured on all general liability policies.

8. **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, Association shall pay to County an amount equal to the applicable cost of recording this Agreement in the Public Records of Orange County, Florida.

9. **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. Association declares 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 legal representatives, successors, and assigns.
10. **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) 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 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.

11. **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 (i) Association or (ii) 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.
12. **COMPLIANCE WITH APPLICABLE LAWS**. Association shall comply with all applicable state laws and county ordinances, including the Orange County Right-of-Way Utilization Regulations.
13. **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).

14. **EFFECTIVE DATE.** This Agreement shall take effect upon being recorded in the Public Records of Orange County, Florida.

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.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Teresa Jacobs,
Orange County Mayor

Date: _____

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

By: _____
Deputy Clerk

<NAME OF HOMEOWNERS' ASSOC.>, a
Florida not-for-profit corporation

By: _____

Print Name: _____

Title: _____

Date: _____

WITNESSES:

Print Name: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by _____, as
_____ of _____, who is known by me to be the person
described herein and who executed the foregoing, this ____ day of _____, 20___. S/he
is personally known to me or has produced _____ as identification and
did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day
of _____, 20__.

Notary Public
Print Name: _____

My Commission Expires: _____

EXHIBIT "A"

Legal Description and Sketch of Description for Property

[See attached __ page(s)]

EXHIBIT “B”

Legal Description and Sketch of Description for Dedicated Areas

[See attached __ page(s)]

EXHIBIT “C”

Detailed plans for the Improvement(s)

[See attached __ page(s)]