

Prepared by:

Tax Parcel ID No.: Refer to Exhibit "A"

USE AGREEMENT BETWEEN
HOMEOWNERS ASSOCIATION AND ORANGE COUNTY

THIS AGREEMENT (the "Agreement") is entered into by and between _____ **HOMEOWNERS ASSOCIATION, INC.**, a Florida not-for-profit corporation (the "Association"), with a mailing address at _____ Florida _____, 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 known as _____ [#name of subdivision#], consisting of _____platted [lots/subdivisions], has been constructed in the unincorporated area of Orange County on certain real property, as more particularly described in **Exhibit "A,"** attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, Association, whose members are the owners of portions of the Property, has been formed pursuant to the Association Articles of Incorporation, which were filed with the Florida Division of Corporations on _____ [#DATE#] and received Document number _____; and

WHEREAS, Association has been created as a voluntary homeowners' association, the purpose of which is to _____[#purpose#]; a list of current Association members is attached hereto and incorporated herein by reference as **Exhibit "B"**; and

WHEREAS, Association desires to obtain a Right-of-Way Utilization Permit and Low Voltage Electrical Registration (together, the "Permits") from County, pursuant to which Association will be allowed to install, construct, and maintain the following improvements: security camera(s), any associated components, electronics, or any other equipment necessary to install such camera(s), any pole(s) to which such camera(s) will be attached, and associated signage within the right-of-way (collectively, the "Improvements"), in the roads, medians, and parkways, located within the existing public rights-of-way adjacent to the Property and/or located within those areas which have been dedicated via plat or deed 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 composite **Exhibit "A"**; and

WHEREAS, County requires that Association and its members undertake certain commitments and covenants to assure the perpetual and continuous maintenance of any such Improvements.

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 AND LOW VOLTAGE ELECTRICAL REGISTRATION.** County shall issue the Permits to Association subject to the terms of this Agreement. Association shall not, while installing, maintaining, or removing the Improvements, 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 Permits shall give or grant to Association or its members any ownership rights to any portion of the Dedicated Areas. Furthermore, nothing contained herein or by virtue of the issuance of the Permits shall give or grant to Association or its members any license, privilege, or right to install, construct, or maintain any of the Improvements outside the Dedicated Areas. Moreover, in the event the Association needs any other type of permit or approval to install, construct, or maintain any of the Improvements, it shall be the Association's responsibility to apply for and obtain any such permit or approval at its sole expense before installation, construction, or maintenance.

3. **IMPROVEMENTS.** Any improvement that, in County's sole opinion, may impede the functional operation of planned, proposed, or existing utilities or facilities shall not be permitted under this Agreement. The Improvements 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.

4. **REMOVAL/RELOCATION.** If, in the sole opinion of County, the Improvements:

- a. Present a safety and/or traffic operational hazard, or

- b. Interfere 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, repair, or relocate the Improvements 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, repair, or removal of the Improvements shall be at the sole expense of Association and at no cost to County.

5. **INDEMNIFICATION.** To the fullest extent permitted by law, Association shall defend, indemnify, and hold County and its agents, officials, and employees harmless from and against all claims, damages, losses, and expenses, including reasonable attorney fees and costs, arising out of, or resulting in whole or in part from, any act or omission of Association and/or its contractors, subcontractors, agents, or employees. The remedy provided to County by this paragraph shall be in addition to and not in lieu of any other remedy available under this Agreement or applicable law and shall survive the termination of this Agreement. Association shall defend, indemnify, and hold County harmless (and any governmental body or utility authority properly using the Dedicated Areas) from and against all expenses, costs, and/or claims for any damages to the Improvement(s) which may result from the use of the Dedicated Areas 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, Association shall procure and maintain on a primary basis, and solely at its cost and expense, insurance of the types and limits, including endorsements, described herein. The requirements contained herein, as well as County's review or acceptance of insurance maintained by Association, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Association under this Agreement. Insurance carriers providing coverage must be authorized and/or eligible to conduct business in State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VIII or better. Association shall require and ensure that each of its contractors and/or subcontractors maintains insurance until the completion of work under any contract associated with this Agreement. Failure of Association to maintain appropriate and adequate insurance coverage for itself or for any other persons or entities for whom it is responsible, or to ensure that its contractors and/or subcontractors maintain such coverage, shall not relieve Association of any contractual responsibility, obligation, or liability. The required coverage shall be as follows:

- Commercial General Liability coverage issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with a limit of liability of not less than \$1,000,000 per occurrence. Association further agrees that coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Separation of Insureds. The General Aggregate limit shall apply separately to this Agreement or shall be at twice the required occurrence limit.

- Association shall endorse County as an Additional Insured with a CG 20 26 Additional Insured-Designated Person or Organization endorsement, or its equivalent, to all commercial general liability policies. This provision shall be listed in the name of the Orange County, Florida Board of County Commissioners.

Within thirty (30) days of the Effective Date of this Agreement, as defined herein, and at any time prior to execution and commencement of any operations under this Agreement, Association shall provide County with current Certificates of Insurance. The type and amount of coverage shall be clearly stated on the face of each certificate. Each certificate shall name County as an additional insured, and shall contain a provision which forbids any cancellation, change, material alteration, or renewal of coverage without providing forty-five (45) days prior written notice to County. In addition to such certificates, Association shall provide copies of the Additional Insured Endorsement(s) and all Waiver of Subrogation endorsements as required herein. Renewal certificates shall be submitted annually within thirty (30) days of renewal. Any insurance certificates, endorsements, or copies thereof required hereunder shall be provided to the Manager of the Development Engineering Division of County's Public Works Department at 4200 South John Young Parkway, Orlando, FL 32839.

7. ASSOCIATION'S UNCONDITIONAL COVENANT TO COMPLY AND MAINTAIN.

a. Association unconditionally covenants and agrees to comply with all terms set forth herein including, but not limited to, its obligations to satisfy the costs associated with installation of any Improvements pursuant to a plan approved in advance by County and to

remove said Improvements at its sole cost and expense upon reasonable demand from County as further detailed herein. Association represents and warrants that: (1) prior to entering into this Agreement, it held a duly-noticed referendum with the owners of all of the Property regarding the Association's plan to install the Improvements and to enter into this Agreement and such referendum passed by at least a majority of all owners of the Property (the "Referendum Majority"), (2) the members of Association who were part of the Referendum Majority comprise at least a majority of Association members (the "Association Majority"), (3) all members of the Association Majority have executed the Joinder and Consent attached hereto and incorporated herein by reference as **Exhibit "C,"** pursuant to which the Association Majority agree to, among other things, bind their successors and assigns to the terms of this Agreement and to have this Agreement recorded against their property (the "Association Property"), as more particularly described in **Exhibit "D,"** attached hereto and incorporated herein by reference, and (4) Association has the authority to enter into this Agreement and to expend Association funds to satisfy its obligations hereunder and no further approval is required to expend said funds other than a routine Board of Directors' resolution. In no event shall County become responsible for any costs associated with installation, removal, re-installation, or maintenance of any and all Improvements approved by County.

b. Association shall establish in its annual budget a reserve account in an amount sufficient to fully reimburse County for any costs County may incur (the "Reserve") as a result of Association's failure to perform any of its obligations under this Agreement. The amount of the Reserve shall be based on the deferred maintenance cost of the Improvements

which shall include the cost of maintenance and removal of the Improvements, and the cost of potential repairs to the Dedicated Areas, all as determined by County. In the event Association fails to maintain or remove the Improvements permitted by County, County shall have the option to remove the Improvements and Association shall have the unconditional obligation to fully reimburse County from the Reserve for any such costs County may incur. Additionally, Association shall annually budget for the Reserve in the agreed upon amount and shall notify County at the address listed in Section 6 hereof, if any budget is approved which waives the Reserve or does not maintain the agreed upon level of funding in the Reserve. Notwithstanding the language in Section 11 hereof, waiver or reduction of the agreed upon amount of the Reserve is cause for immediate termination of this Agreement and revocation of the Permits by County.

c. Association shall comply with all County policies and standards for the installation of the Improvements and shall coordinate all Improvement requests through the County's Public Works Department. All Improvements installed by or for the benefit of the Association shall substantially adhere to the "Improvement Requirements" attached hereto and incorporated herein by reference as **Exhibit "E."**

d. Association shall at all times throughout the term of this Agreement validly maintain its corporate existence with the State of Florida, Division of Corporations, and annually provide proof of good standing to the Manager of County's Development Engineering Division at the address listed in Section 6 above.

e. Association's financial obligation to reimburse the County for any costs

County may incur related to this Agreement or the Improvements shall survive the termination of this Agreement.

8. **ASSOCIATION MAJORITY'S UNCONDITIONAL OBLIGATION.** In the event Association is unable or unwilling to meet its financial obligations to the County pursuant to this Agreement, the Association Majority, by executing the Joinder and Consent attached hereto as Exhibit "C," agree to meet the Association's financial obligation(s) hereunder.

9. **RECORDING.** This Agreement shall be recorded against the Association Property in the Public Records of Orange County, Florida, within thirty (30) days of its full execution, at Association's expense. Promptly upon execution of this Agreement by Association, but prior to execution of the Agreement by County, Association shall pay to County an amount equal to the applicable cost of recording this Agreement in the Public Records of Orange County, Florida.

10. **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 the Association Property described in Exhibit D hereof, or any portion thereof. Furthermore, this Agreement shall be binding on all parties having any right, title, or interest in the Association Property described herein, or any portion thereof, and their heirs, personal representatives, successors, and assigns. Association and the Association Majority declare that the Association 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.

11. **DURATION.** The provisions, restrictions, and covenants of this Agreement shall run with and bind the land for a period of five (5) 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 five (5) years each, unless a written instrument agreeing to terminate or revoke said provisions, restrictions, and covenants is approved by a majority of the Orange County Board of County Commissioners and Association. No such agreement to terminate or 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 unilaterally cancel this Agreement upon forty-five (45) days prior written notice to Association. 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. Should the Association desire to remove the Improvements, Association shall notify County in writing and, upon County's written approval of a plan to restore the Dedicated Areas, and County's final sign-off of the implementation of said plan and removal of the Improvements, this Agreement shall terminate once a written instrument acknowledging such termination has been executed and acknowledged by the Board of County Commissioners and recorded in the Public Records of Orange County, Florida.

12. **NO MSTU or MSBU.** In light of the purpose and intent of this Agreement,

Use Agreement, 20____
_____ Homeowners Assoc., Inc.

Association understands and agrees that during the term of this Use Agreement, County will not entertain or process any petition to establish a Municipal Service Taxing Unit (MSTU) or a Municipal Service Benefit Unit (MSBU) for the Improvements in _____[#name of subdivision#].

13. **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 the Association. 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.

14. **COMPLIANCE WITH APPLICABLE LAWS.** Association shall comply with all applicable laws and county ordinances, including the Orange County Right-of-Way Utilization Regulations, codified at Section 21-171, et seq., Orange County Code, and any laws regarding to the installation, maintenance, and use of the Improvements.

15. **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 Improvements. *THE COUNTY WILL NOT OWN, MONITOR, ACCESS, OR OTHERWISE CONTROL THE IMPROVEMENTS, OR THE DATA GENERATED THEREFROM, DESCRIBED IN THIS AGREEMENT.*

16. **NOTICE.** Any notice delivered with respect to this Agreement shall be in writing and be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the

Use Agreement, 20____
_____ Homeowners Assoc., Inc.

United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

As to
Association:

Attention:

With copy to:

As to County: Orange County Administrator
201 South Rosalind Avenue, 5th Floor
Orlando, Florida 32801

With copy to: Manager, Development Engineering Division
Orange County Public Works Department
4200 South John Young Parkway
Orlando, FL 32839

17. **APPLICABLE LAW.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida and in accordance with the Orange County Code.

18. **CONSTRUCTION OF AGREEMENT; SEVERABILITY.** Captions of the Sections and Subsections of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material

Use Agreement, 20____
_____ Homeowners Assoc., Inc.

benefits by any party hereunder or substantially increase the burden of any party hereunder, shall be held to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

19. **COUNTERPARTS.** This Agreement may be executed in the same number of counterparts as there are parties to this Agreement, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

20. **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.

“COUNTY”

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: _____
Teresa Jacobs, County Mayor

Date: _____, 20__

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

By: _____
Deputy Clerk

[Signatures continue on following page]

Use Agreement, 20____
_____ Homeowners Assoc., Inc.

“ASSOCIATION”

HOMEOWNERS ASSOCIATION, INC.

By: _____

Print Name: _____

Title: _____

Date: _____, 20__

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: _____

Use Agreement, 20____
_____ Homeowners Assoc., Inc.

Exhibit "A" (_____ pages)

Description of the Property and Dedicated Areas

Use Agreement, 20____
_____ Homeowners Assoc., Inc.

Exhibit "B" (pages)

List of Association Members

Use Agreement, 20____
_____ Homeowners Assoc., Inc.

Exhibit "C" (___ pages)

Joinder and Consent of Association Majority

Use Agreement, 20____
_____ Homeowners Assoc., Inc.

JOINDER AND CONSENT TO USE AGREEMENT

The undersigned hereby certifies that he/she/they is/are the owner (or mortgagee) of the following property (the "Property"):

[#LEGAL DESCRIPTION OF PROPERTY#]

and that the undersigned hereby joins in and consents to the terms of the Use Agreement entered into by and between the _____ Homeowners Association, Inc. (the "Association") and Orange County, Florida (the "County") dated _____, 20__ (the "Use Agreement"). The undersigned consents to the recording of the Use Agreement against the Property and agrees that the terms of such Use Agreement shall be binding upon the undersigned's successors and assigns. Further, in the event Association is unable or unwilling to meet its financial obligations to the County under the Use Agreement, the undersigned agrees to meet the Association's financial obligation(s) thereunder.

Signed, sealed and delivered in the presence of:

[#Individually / as Husband and Wife#]

By: _____

Print Name: _____

Name: _____

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____ . He/she [] is personally known to me, or [] produced _____ as identification.

(NOTARIAL SEAL)

Notary Public
Print Name: _____
My Commission Expires: _____

Use Agreement, 20____
_____ Homeowners Assoc., Inc.

Exhibit "D" (_ pages)

Legal Description of Association Property

Exhibit “E” (2 pages)

Improvement Requirements

The requirements below shall be followed for any Improvements under the Agreement; provided, however, that Orange County may approve deviations from the requirements below, in its sole discretion, on a case-by-case basis as part of the Permit review process.

Camera(s)

- Decoy cameras shall not be permitted
- Cameras shall only be located at ingress and/or egress points to and from the Property
- Camera angle shall be fixed (no pan, tilt, or zoom feature) and directed at public right-of-way entry/exit to and from Property so that no recording is performed except of events and persons in the public view; cameras shall not provide visual access to any area not visible to the general public
- Monitoring and recording of image(s) shall be done in a responsible, lawful, and ethical manner. Any illegal use of monitoring equipment may be subject to prosecution and may result in the revocation of the Permits and termination of the Agreement
- Audio recording shall be prohibited

Signage

- Each camera pole shall have an informational logo or decal attached to it in plain sight. The logo or decal shall be not more than four inches by four inches (4” x 4”) in size and shall include the name of the Association, the Association’s contact telephone number, County permit numbers, and the recording information (OR Book and Page) of the Use Agreement approving the Improvement
- A sign measuring not more than twelve inches by eighteen inches (12” x 18”) in size shall be placed in plain sight so as to be clearly visible to motorists or pedestrians entering the Property at the entrance(s) to the Property where camera(s) are in use, and shall read as follows:

*“THIS AREA MAY BE UNDER PRIVATE VIDEO SURVEILLANCE.
Camera equipment may be recording, without being monitored, to aid in the
prosecution of any crimes committed in this area.”*

Pole(s)

- Pole height shall be between six feet (6’) and fifteen feet (15’) high
- Poles shall not be placed any closer than two and a half feet (2 ½’) from the curb (relative to curb edge), or no less than six feet (6’) from the traveled edge if there is no curb

Use Agreement, 20____
_____ Homeowners Assoc., Inc.

- Cameras and signage shall not be permitted to be attached to utility poles
- Poles shall be constructed of “break-away” material for safety
- Cameras and signage shall only be permitted when attached to a pole dedicated to the Improvement and complying with the terms of this Agreement

Installation

- Cameras and poles shall only be installed by a company that is licensed and insured (in accordance with the Agreement) to do business in Orange County, Florida

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