

Prepared by:

Tax Parcel ID No.: <for the Property>

USE AGREEMENT BETWEEN
<HOA / GROUP / BUSINESS NAME> AND ORANGE COUNTY

THIS AGREEMENT (the “Agreement”) is entered into by and between <Name of HOA / group / business>, a <state and type of entity> (“Name”), with a mailing address at <Address> and Orange County, Florida, a charter county and political subdivision of the State of Florida (“County”), with a mailing address at P.O. Box 1393, Orlando, FL 32802-1393.

RECITALS

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

(for HOA) WHEREAS, <Name>, 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;

(for business or group) WHEREAS, <Name> owns the Property; and

WHEREAS, <Name> previously applied for and been awarded a grant from County’s Neighborhood Preservation and Revitalization Division pursuant to County’s Roadway Median Tree Grant Program (the “Grant Program”); and

WHEREAS, pursuant to the aforementioned Grant Program, <Name> desires to obtain a Right-of-Way Utilization Permit (the “Permit”) from County, whereby <Name> will be allowed to install, construct, and maintain County-approved trees (the “Improvements”) in the median

area located within that certain public road known as <Road Name> (the “Project”), located adjacent to the Property, and more particularly described in the attached and incorporated Exhibit “B”; and

WHEREAS, County requires that <Name> undertake certain commitments and covenants to assure proper installation and maintenance of the 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.** Any such Permit issued by County to <Name> shall be subject to the terms of this Agreement, and contingent upon execution of a maintenance agreement for the Improvements. <Name> shall not, while installing or maintaining the Improvements, damage or disturb any portion of <Road Name> without prior written approval by County and County’s prior written approval of a plan to restore the <Road Name>. Nothing contained herein or by virtue of the issuance of the Permit shall give or grant to <Name> any ownership rights to any portion of the <Road Name> or the median area.
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 Improvements shall be

established and maintained in such a manner as will not interfere with the use of the <Road Name> by County or the public, nor create a safety hazard on <Road Name>, and shall adhere to the following requirements:

a) Prior to beginning any work, <Name> shall present to County, for its approval, a plan for maintenance of traffic (the “MOT Plan”) related to installation and maintenance of the Improvements.

b) <Name> shall submit three (3) quotes from a licensed and insured contractor reasonably acceptable to County to address design, installation, fertilization, trimming, and watering of the Improvements for three (3) years.

c) All design plans must be approved by County, and shall include only trees identified by County as water-wise trees.

d) Alternatively, <Name> may agree to use a pre-approved tree plan provided by County.

e) <Name> shall establish a five (5) member committee to oversee the Project.

If at any time County determines that the Improvements do present a safety hazard, then <Name>, 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 Improvements interfere with any construction, reconstruction, alteration,

Improvements, or maintenance which County desires to perform on, around, or under <Road Name>, then <Name>, upon receipt of a written notice from County, shall remove 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 or removal of the Improvements shall be at the sole expense of <Name> and at no cost to County.

5. **INDEMNIFICATION.** To the fullest extent permitted by law, <Name> 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. <Name> shall defend, indemnify, and hold harmless County (and any governmental body or utility authority properly using <Road Name>) from and against all expenses, costs, or claims for any damages to the Improvements which may result from the use of <Road Name> by County or any other governmental body or authority due to maintenance, construction, installation, or other proper use within <Road Name>.
6. **INSURANCE.** Throughout the duration of this Agreement, including the initial period and any extensions thereto, <Name> 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 <Name> does not own automobiles, <Name> 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, <Name> shall provide Certificates of Insurance to County to verify coverage. The name of the development, subdivision, or project in which the Improvements 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.

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, <Name> 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. <Name> 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.

9. **DURATION.** The provisions, restrictions, and covenants of this Agreement shall run with and bind the Property for a period of five (5) years from the date this Agreement is 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 <<if business / group: <Name>.>> <<if HOA: either (i) <Name> 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.
11. **COMPLIANCE WITH APPLICABLE LAWS.** <Name> 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 Improvements.
13. **EFFECTIVE DATE.** This Agreement shall take effect upon being recorded in the Public Records of Orange County, Florida.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

Use Agreement, 20__
<HOA /organization/ business name>

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,
Orange County Mayor

Date: _____

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

By: _____

Deputy Clerk

<NAME>

<NAME OF GROUP / BUSINESS /
HOMEOWNER'S ASSOC.>, a <state/type
of entity>

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: _____

Use Agreement, 20__
<HOA /organization/ business name>

EXHIBIT "A"

Legal Description and Sketch of Description for Property

[See attached __ page(s)]

EXHIBIT “B”

Legal description and sketch of description for <Road Name>

[See attached __ page(s)]

Use Agreement, 20__
<HOA /organization/ business name>