

RIGHT- OF- WAY BEAUTIFICATION REVOCABLE LICENSE AGREEMENT

This RIGHT-OF-WAY BEAUTIFICATION LICENSE AGREEMENT is made and entered into this ___ day of _____, 2014, between the CITY OF CLEARWATER, FLORIDA, a Florida municipal corporation, C/O Parks and Recreation Department, P.O. Box 4748, Clearwater, Florida 33758-4748, referred to herein as the “City” and _____, a corporation, partnership, or natural person, whose address is _____, referred to herein as the “Licensee” (individually referred to herein as “Party” or collectively as the “Parties”).

WHEREAS, Licensee is a neighborhood group or association (“Association”) wishing to maintain certain landscaping and/or improvements within City right-of-way at the entrance to its neighborhood or development, or other area in close proximity to its neighborhood; and

WHEREAS, the City values and promotes the beautification of its rights-of-way and neighborhoods, and therefore supports the efforts of the Association to maintain such neighborhood entrances and other local areas; and

WHEREAS, the City therefore agrees to permit the continued presence of the landscaping and/or improvements to be maintained by the Association under the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

1. City hereby grants to Licensee the non-exclusive right to occupy and use City’s right-of-way (“Premises”), as more particularly described in Exhibit “A”, (attached hereto and made a part hereof) for the maintenance of beautification landscaping and improvements (“Improvements”) as more particularly described in Exhibit “B”, (attached hereto and made a part hereof), subject to the terms and conditions herein set forth. The Premises shall be used for the sole purpose of maintaining the Improvements and for no other purpose. Licensee shall not make any alterations, additions, or improvements, other than as to routine maintenance or replacement of landscaping with similar landscaping, without the written consent of the City, which may be withheld, in the City’s sole discretion.
2. The rights granted to Licensee under this Agreement are not coupled with an interest in land. It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee

simple or other real property interest in the Premises to the Licensee. The City specifically reserves the right to grant other rights of entry in regard to the Property.

3. Licensee shall be responsible for all costs associated with its activities and responsibilities under this Agreement. In no instance shall the city incur costs, unless specifically set forth herein. The Licensee shall keep the Improvements clean, neat and in good repair at all times. The Licensee shall commence and complete all necessary maintenance and repair work on the Improvements as necessary, but not later than thirty (30) days following receipt by the Licensee of written notice from the City that such work is necessary, or within such longer time as may be approved by the City. Upon failure of the Licensee to affect such maintenance or repair work in a timely manner following notice to the Licensee that such work is necessary, the City may remove and dispose of the Improvements without further notice. Licensee shall not permit any mechanic's lien to be filed against the Premises by reason of any work, labor, service or materials performed at or furnished to the Premises.
4. Responsibilities as to mowing, planting, clipping, pruning, tending, watering, feeding, weeding, mulching, pest control, fertilization, maintenance of trees and tree trimming, irrigation, water and electric bills shall be allocated to the Parties as set forth in Exhibit "C", (attached hereto and incorporated herein).
5. City explicitly renounces any liability of Licensee, or any agents or invitees of the Licensee in the course of occupying the Premises or carrying out any of the activities contemplated hereunder. The Licensee shall indemnify and hold harmless the City and its officers, agents, and employees against any claims for bodily injury or property damage arising out of the maintenance and continued presence of the Improvements, excluding claims or actions arising solely from negligent acts of the City or its officers, agents or employees. Nothing contained herein shall be construed to waive or modify the provisions of Florida Statute 768.28 or the doctrine of sovereign immunity. In addition, nothing contained herein shall be construed as creating third party beneficiaries or as consent by the Owner to be sued by third parties in any manner arising from this grant of License. This provision shall survive termination or expiration of this Agreement.
6. This License Agreement shall be subject to revocation and termination by the City in the event of any one or more of the following events:
 - a. The material default by Licensee in the performance of any of the terms, covenants, or conditions of this License Agreement, and in the

failure of the Licensee to remedy, or undertake to remedy to City's satisfaction such default within the specific time period stated in this License Agreement, provided, however, if no specific time period is stated herein to remedy a particular default or to take a particular course of action, then it is agreed by the parties hereto that Licensee shall have a period of thirty (30) days after receipt of notice from City to remedy the default or complete a particular course of action required of Licensee.

- b. The City determines at a duly constituted City Council meeting that a public need exists for the Premises consistent with the City's Charter and serves Licensee with sixty (60) days notice of such intended use.
 - c. Licensee's removal of the Improvements.
 - d. Destruction of the Improvements, or the Improvements have reached the end of their useful life, or have otherwise deteriorated to the extent that the Improvements create a safety hazard or become aesthetically unacceptable as determined by the City in its sole discretion.
 - e. The Improvements create a safety hazard, including but not limited to, interference with utilities and site distance problems, as determined by the City in its sole discretion. At any time during the terms of this agreement, if the Improvements create a safety hazard, the Improvements may be removed by the City Engineer at the Licensee's expense.
7. Upon termination of the license for any reason, Licensee, at its sole expense, shall remove from the Premises any Improvements remaining, which Licensee was permitted to install or maintain in the City's Right-Of-Way under the terms of this License Agreement. City may affect such removal at Licensee's expense should Licensee fail to remove said Improvements from the Premises within thirty (30) days of receipt of written notice following termination of this License Agreement. Licensee agrees to pay City promptly in the event of such circumstances upon presentation of a proper invoice.
8. Licensee shall secure all necessary licenses and permits as required to operate under this Agreement, and shall comply with all laws, ordinances, regulations, etc., applicable to the operation of this Agreement.
9. This Agreement contains all of the terms, conditions and covenants binding the parties hereto. There are no other terms, conditions, covenants or understandings, either written or oral, binding upon the parties unless

expressed herein in writing or subsequently addended hereto by mutual agreement of the parties.

10. This Agreement replaces and supersedes all agreements between the Parties that may have previously existed. This License is personal and may not be assigned.

IN WITNESS WHEREOF, the parties hereto have executed and affixed their official seals to this agreement on the day and year first above written.

Signed, sealed and delivered
In the presence of:

_____ name of association

Witness signature

Print Witness name

By: _____
Print Name _____
Title _____

Witness signature

Print Witness name

Countersigned:

CITY OF CLEARWATER, FLORIDA

George N. Cretekos, Mayor

By: _____
William B. Horne, II, City Manager

Approved as to form:

Attest:

Laura Lipowski Mahony
Assistant City Attorney

Rosemarie Call, City Clerk