

## MAINTENANCE AND LICENSE AGREEMENT

THIS MAINTENANCE AND LICENSE AGREEMENT (the "**Agreement**") is made and entered by and between PASCO COUNTY, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof, hereinafter referred to as the "COUNTY," whose address is 37918 Meridian Avenue, Dade City, Florida 33525 and **OAKSTEAD COMMUNITY DEVELOPMENT DISTRICT**, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, whose address is 8875 Hidden River Parkway, Suite 270, Tampa, Florida 33637, hereinafter referred to as the "APPLICANT."

### WITNESSETH:

**WHEREAS**, the APPLICANT states that it is a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes that was organized for the purpose of maintaining common properties serving the residents of the Oakstead Community Development District, a residential subdivision, situated within Pasco County, Florida; and

**WHEREAS**, the APPLICANT desires to install and maintain a pedestrian boardwalk within the COUNTY'S right-of-way as specifically depicted in **Exhibit "A"** hereto, and incident to such installation and maintenance, the COUNTY requires a maintenance and license agreement; and

**WHEREAS**, the APPLICANT has applied for the necessary right-of-way use permit to construct the above-described pedestrian boardwalk.

**NOW, THEREFORE**, in consideration of the foregoing premises and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The WHEREAS clauses set forth above are incorporated herein by reference and made a part of this Agreement.

2. **Grant of License.** The COUNTY hereby grants and delivers to the APPLICANT a nonexclusive license to use those portions of the COUNTY'S right-of-way along Oakstead Blvd. as depicted on **Exhibit "A"**, which is attached hereto and incorporated herein by reference (the "**Subject Right-of-Way**"), for the maintenance of the Subject Right-of-Way, and installation and maintenance of the pedestrian boardwalk as specifically depicted on the attached **Exhibit "A"** (the "**Boardwalk**") pursuant to the terms and covenants herein. Any material change, alteration, modification, or addition to the Boardwalk or Subject Right-of-Way as depicted on **Exhibit "A"** must have prior written approval by the COUNTY subject to its sole discretion.

3. **Maintenance of Right of Way and Boardwalk.** The APPLICANT hereby agrees to maintain the Subject Right-of-Way and the Boardwalk in a safe and clean condition and shall trim any vegetation within, and adjacent to, the area of the Boardwalk to avoid any clear sight violation during the term of this Agreement. This obligation shall be the sole responsibility of the APPLICANT during the term of this Agreement.

4. **Insurance.** The APPLICANT shall procure and maintain, for the duration of this Agreement, insurance as provided herein. The cost of such insurance shall be borne by the APPLICANT.

The APPLICANT shall not enter or perform any work within the Subject Right-of-Way until it has obtained all insurance required herein and such insurance has been approved by the COUNTY as provided herein.

The APPLICANT shall furnish certificate(s) of insurance on the form required by the COUNTY to the COUNTY (attention Pasco County Risk Manager, West Pasco Government Center, 7530 Little Road, Suite 330, New Port Richey, Florida 34654-5598). The certificate(s) shall clearly indicate that the APPLICANT has obtained insurance of the type, amount, and classification required for strict compliance with this Agreement and that no reduction in coverage or in limits, suspension, or cancelation of the insurance shall be effective without thirty (30) days' prior written notice as provided below. The certificate(s) shall be signed by a person authorized by that insurer to bind coverage on its behalf. The COUNTY reserves the right to require complete, certified copies of all required policies, at any time. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the COUNTY to the attention of the Pasco County Risk Manager. In the event the insurance coverage expires prior to the termination or end of this Agreement, a renewal certificate shall be issued thirty (30) days prior to the said expiration date. Compliance with the foregoing requirements shall not relieve the APPLICANT of the liability and obligations under this Agreement. Neither approval by the COUNTY nor a failure to disapprove insurance certificates or policies furnished by the APPLICANT shall release the APPLICANT of full responsibility for all liability or its obligations under this Agreement.

All insurance policies shall be issued by responsible companies authorized to do business under the laws of the State of Florida, having an "A" policyholders' rating, having a financial rating of at least Class VIII in accordance with the most current *Best's Key Rating Guide* and shall be satisfactory to the COUNTY. All policies of insurance required by this

Agreement shall be the primary insurance as respects the COUNTY, its officials, agents, and employees. Any insurance or self-insurance maintained by the COUNTY, its officials, agents, or employees shall be in excess of the APPLICANT'S insurance and shall not contribute with it. All policies of insurance required by this agreement, except workers' compensation, shall specifically provide that the COUNTY shall be an "additional insured" under the policy and shall contain a Severability of Interests provision. All insurance policies required herein shall apply to all operations, activities, or use by the APPLICANT or by anyone employed by or contracting with the APPLICANT. The insurance coverages and limits provided herein are designated to meet the minimum requirements of the COUNTY. Any deductibles or self-insured retentions must be declared to and approved by the COUNTY and are the responsibility of the APPLICANT. The minimum kinds and limits of coverage to be carried by the APPLICANT shall be as follows:

a. **Workers' Compensation and Employer's Liability:** If the APPLICANT falls under the State of Florida Workers' Compensation Law, the APPLICANT shall provide coverage for all employees. The coverage shall be for the statutory limits in compliance with the applicable State and Federal laws. The policy must include employer's liability with a limit of One Hundred Thousand and 00/100 Dollars (\$100,000.00) each accident. The insurer shall agree to waive all rights of subrogation against the COUNTY, its officials, agents, and employees for losses relating to or in connection with this agreement and/or arising from the premises.

b. **Comprehensive General Liability:** Shall include premises and/or operations, broad form property damage, independent contractors, and contractual liability and shall be written on an "occurrence basis."

Bodily injury and personal injury, including death	\$1,000,000.00 each person \$2,000,000.00 aggregate
Property damage	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate

5. **Indemnification.** To the extent permitted under Section 768.28, Florida Statutes and the Florida Constitution, the APPLICANT shall indemnify, defend, and hold harmless the COUNTY and all of its agents and employees from any claim, loss, damage, costs, charge, or expense, including attorney's fees and costs, arising from or in connection with: 1) any work or thing whatsoever done or any condition created in or about the COUNTY'S Right-of-Way during the term of this Agreement ; 2) any act, omission or negligence of the APPLICANT or any of the APPLICANT'S licensees or the partners, directors, officers, agents, employees, invitees, or contractors of the APPLICANT or of the APPLICANT'S licensees; or 3) any accident, injury, or damage whatsoever occurring in or at the COUNTY'S Subject Right-of-Way. The APPLICANT hereby expressly indemnifies the COUNTY for the consequences of any negligent act or omission of the COUNTY, its agents, servants, and employees, except that the APPLICANT will not be liable under this provision for damages arising out of the injury or damage to persons or property directly caused or resulting from the sole negligence of the COUNTY or any of its agents, servants, or employees.

The APPLICANT'S obligation to defend and indemnify shall not be excused because of the APPLICANT'S inability to evaluate liability or because the APPLICANT evaluates liability and determines the APPLICANT is not liable or determines the COUNTY is solely negligent. Only a final adjudication or judgment finding the COUNTY negligent shall excuse performance of this provision by the APPLICANT. If a judgment which finds the COUNTY is solely negligent is appealed and the finding of negligence is reversed, the APPLICANT will be obligated to indemnify the COUNTY for the cost of the appeal(s). The

APPLICANT shall pay all costs and fees related to this obligation and its enforcement by the COUNTY.

This provision shall also pertain to any claims brought against the COUNTY by any employee of the APPLICANT, contractor, subcontractor, or anyone directly or indirectly employed by any of them.

The APPLICANT'S obligation under this provision shall not be limited in any way by the APPLICANT'S limit of or lack of sufficient insurance protection.

This section shall survive any termination of this Agreement.

6. **Signs Located in County Right-of-Way.** Any signs installed on the Boardwalk, as signs are defined in the Pasco County Land Development Code, are required to have the appropriate County approval pursuant to Section 307 of the Pasco County Land Development Code, and all other applicable County ordinances, prior to any installation of any signs. The Applicant agrees to obtain such appropriate County approval prior to installing any signs on the Boardwalk. This Agreement is not intended in any way, and shall not be construed in any way, to grant any County approval for installation of signs without the prior County approval indicated in this Section, or vest any right in the Applicant to appropriate County approval of any sign.

7. **Right-of-Way Use Permit.** The APPLICANT agrees to obtain a COUNTY Right-of-Way Use Permit prior to entering or performing any work in the Subject Right-of-Way, including the installation of the Boardwalk.

8. **Termination of Agreement.** The COUNTY may terminate this Agreement in writing at any time and for any reason in whole, or from time to time, in part; upon termination the Applicant shall immediately cause the Boardwalk to be removed and restore the Subject Right-of-Way to the condition prior to installing such Boardwalk, and in no case later than thirty

(30) days from the date of termination. This obligation by the Applicant shall survive any termination of this Agreement. The APPLICANT may at any time and for any reason terminate this Agreement in writing upon ninety (90) days' notice to the COUNTY provided that the APPLICANT removes the Boardwalk and restores the Subject Right-of-Way to the condition prior to installing such Boardwalk.

9. **Waiver of Claims.** The APPLICANT hereby waives all claims against the COUNTY for loss or damage resulting from interference by a public agency, or official, or natural phenomena including, but not limited to, fire, water, tornado, hurricane, or other severe storms, or any commotion, riot, or criminal activity.

10. **Notices.** All correspondence between the parties pursuant to this Agreement shall be in writing and sent by U.S. mail to the address below. All parties herein shall be on notice the date such notice is postmarked.

Pasco County  
c/o Development Review  
7530 Little Road, Suite 240  
New Port Richey, FL 34654

Oakstead Community Development District  
c/o District Manager  
8875 Hidden River Parkway, Ste. 270  
Tampa, FL 33637

11. **Limitations of Agreement.** It is expressly stipulated that this Agreement is a license for permissive use only and that the use of the Subject Right-of-Way shall not operate to create or to vest any property right or interest in the APPLICANT.

12. **Prior Agreements.** This Agreement represents the entire Agreement between the parties and supersedes any and all prior agreements, negotiations or understandings, written or oral relating to the matters set forth herein. Prior Agreements, negotiations or understandings, if any, shall have no force or affect whatsoever on this Agreement.

13. **Assignment**. No assignment, delegation, transfer or novation of this Agreement or any part hereof shall be made unless approved in writing and signed by all parties to this Agreement.

14. **Severability**. If any part, term or provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state or local law or regulation, such part, term or provision shall be severable, with the remainder of this Agreement remaining valid and enforceable.

15. **Amendments**. No modification, addendums or amendments of any kind whatsoever may be made to this Agreement unless in written consent and signed by both parties.

16. **Sovereign Immunity**. Nothing in this Agreement shall be construed in any way to waive the sovereign immunity of the COUNTY or of the APPLICANT under Section 768.28, Florida Statutes.

17. **Governing Law**. This Agreement shall be governed by the laws of the state of Florida, and venue for any litigation about this Agreement shall be in the 6<sup>th</sup> Judicial Circuit in and for Pasco County, Florida.

18. **Time of the Essence**. Time is of the essence to all parts of this Agreement.

19. **Effective Date**. This Agreement shall be effective on the date last executed.

20. **Term**. The Term of this Agreement shall be for an initial term of one (1) year and shall automatically renew thereafter on an annual basis, unless terminated by the COUNTY or the APPLICANT as provided herein.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals on the date and year shown below and signatories do hereby confirm the governing or managing body of each party has approved the content, form, and manner of execution of this Agreement.



(SEAL)

BOARD OF COUNTY COMMISSIONERS OF  
PASCO COUNTY, FLORIDA

ATTEST:

\_\_\_\_\_  
PAULA S. O'NEIL  
CLERK AND COMPTROLLER

Jack Mariano, Chairman

DATED: \_\_\_\_\_

OAKSTEAD COMMUNITY DEVELOPMENT DISTRICT

By: Joseph N. Cascio

Name: Joseph N. Cascio  
Chair, Board of Supervisors

DATED: February 5, 2009

STATE OF FLORIDA  
COUNTY OF PASCO

The foregoing instrument was acknowledged before me this 5 day of FEBRUARY, 2009  
by JOSEPH CASCIO, who is personally known to me or has produced  
\_\_\_\_\_ as identification.

Andrew P. Mendenhall

Notary Public  
My Commission Expires:

