



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 5/15/07

SUBJECT: PROPOSED LICENSE AGREEMENT FOR COUNTRYSIDE PUD SUBDIVISION



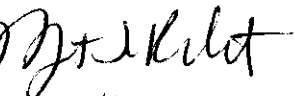

DEPARTMENT: COMMUNITY DEVELOPMENT

RECOMMENDED MOTION: To approve and to authorize the Mayor and City Manager to act on behalf of the City to execute the License Agreement for Countryside PUD Subdivision.

SUMMARY: Countryside PUD Unit III-A Homeowners Association and Countryside PUD Residential Homeowners Association are requesting permission to install a new subdivision sign and re-install a light post in the median of Village Trail, a 100-foot wide City right-of-way. The median was recently re-constructed with the addition of a left turn lane at the intersection of Nova Road and Village Trail. The sign shall be located so as not to block line of sight for drivers as well as pedestrians using the crosswalk. Permits for the sign and the electrical for the light post will be obtained by the HOA.

The license agreement has the effect of requiring the HOA to maintain and, if necessary, to replace these improvements with the accepted standard construction requirements of the City. Further, should the HOA fail to abide by this agreement, the City is provided with the ability to take the necessary corrective action at the expense of the HOA.

ATTACHMENTS: Ordinance Resolution Budget Resolution
 Other Supporting Documents and Contract

DEPARTMENT HEAD			Wayne Clark, Community Development Director	Date 5/3/07
FINANCE DEPARTMENT	N/A		Approved as to Budget Requirements	Date
CITY ATTORNEY			Approved as to Form and Legality	Date 5.4.07
CITY MANAGER			Approved Agenda Item For:	5/15/07

COUNCIL ACTION: Approved as Recommended Disapproved
 Tabled Indefinitely Continued to Date Certain Approved with Modification

This Document Prepared by:
Linda D Johnson CP, Certified Paralegal for City Attorney
City of Port Orange
1000 City Center Circle, Port Orange, FL 32129

Return Recorded Document to:
Attention: Records Clerk
City of Port Orange
1000 City Center Circle
Port Orange FL 32129

LICENSE AGREEMENT

This Space Reserved for Recording Data

THIS **LICENSE AGREEMENT** is made and entered into this _____ day of _____, 2007 by and between the **City of Port Orange, Florida**, a chartered municipal corporation ("City"), mailing address: Attention: City Manager, 1000 City Center Circle, Port Orange, FL 32129-4144 as "Licensor;" and **COUNTRYSIDE PUD UNIT III-A HOMEOWNERS ASSOCIATION, INC.**, a Florida not-for-profit corporation, mailing address: Townhomes 111A, P.O. Box 291502, Port Orange, FL 32127 ("Owner"); and **COUNTRYSIDE PUD RESIDENTIAL HOMEOWNERS ASSOCIATION, INC.**, a Florida not-for-profit corporation, mailing address: 951 Village Trail, Port Orange, FL 32127 ("Association"), collectively referred to herein as "Licensee".

PREMISES

WHEREAS, the City Council of the City of Port Orange has adopted Resolution No. 95-64, which establishes City policy regarding improvements within City rights-of-way by private citizens, property owners, homeowners associations, and developers; and

WHEREAS, the City and the Licensee have agreed on an improvement plan, as described on **Exhibit "A,"** attached hereto and incorporated herein by reference; and

WHEREAS, the Association hereby warrants to the City that the Association has full power and authority to enter into this Agreement, and that the Association's agreement to be bound by the terms and conditions hereof is in compliance with and shall remain in compliance with the declaration of covenants and restrictions, as may be amended from time to time, the articles of incorporation, and the by-laws governing the Association; and

WHEREAS, the Owner hereby warrants to the City that the Owner has full power and authority to enter into this Agreement, and that the Owner's agreement to be bound by the terms and conditions hereof is in compliance with and shall remain in compliance

with any declaration of covenants and restrictions, as may be amended from time to time, the articles of incorporation, and the by-laws governing the Owner; and

WHEREAS, the improvement plan encompasses the landscaped median which is a part or all of a City right-of-way known as Village Trail, a 100-foot wide City right-of-way, as depicted in **Exhibit "B,"** attached hereto and incorporated herein by reference; and

WHEREAS, the Licensee is the owner of real property located in the subdivision known as: COUNTRYSIDE P.U.D. – UNIT IIIA, whereby Village Trail was dedicated as a public right-of-way. The legal description of the applicable phase of that subdivision is attached hereto as **Exhibit "C."**

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

1. The City hereby grants to the Licensee a license to enter upon and to utilize the right-of-way known as Village Trail located and situated in Port Orange, Volusia County, Florida as depicted in **Exhibit "B"** for the purpose of installation, maintenance, repair, replacement and removal of irrigation, landscaping and subdivision identification signage improvements (hereinafter "improvements") approved by the City as depicted in **Exhibit "A."**
2. All improvements, uses and activities shall comply with the policies established in Resolution No. 95-64 and with the terms and conditions of this License Agreement and exhibits hereto; and irrigation must be in place prior to placement of plantings.
3. The Licensee, and the Licensee's officers, directors, members, agents, guests and invitees, shall exercise the rights, privileges and permission granted herein at the Licensee's own risk. The Licensee shall not claim any damages from the Licensor for any injuries or damages that arise out of or result from the use, maintenance, or occupancy of the Improvements by the Licensee or the Licensee's officers, directors, members, agents, guests and invitees, or that are otherwise connected to or on account of the grant of this License. The Licensee agrees to cause the City of Port Orange, Florida to be named as an additional insured on a policy of general liability insurance having minimum coverage of One Million Dollars (\$1,000,000) and shall further provide for the insurance carrier to notify the City not less than 30-days prior to an effective date of non-coverage or policy cancellation. Proof of insurance coverage as set forth above shall be provided to the City prior to acceptance of the Improvements. Further, the Licensee shall indemnify and hold harmless the Licensor, its officers, employees and agents, from and against all claims, damages, injuries, losses and expenses, including reasonable attorneys' fees and costs, arising out of,

resulting from, or in any way connected with the condition of the Licensor's property, the use of the property, the exercise of the license granted by this License Agreement, the failure on the part of the Licensee to comply with any of the provisions specified herein, or the Licensor's removal of any Improvements to be located within the subject licensed area described in **Exhibit "A"** or otherwise permitted by this License Agreement. The Licensor shall not be liable to the Licensee if for any reason the Licensee's use of the property is hindered, disturbed or terminated.

4. The Licensee jointly and severally assumes all responsibility for the maintenance and, if necessary, replacement of all improvements depicted in **Exhibit "A."**

5. The Licensee agrees, upon thirty (30) days written notice from the City, to maintain, repair or replace all improvements that require maintenance, repair or replacement. If no remedy is made within the specified time, the City reserves the right to remove all improvements without further notice to the Licensee and at the sole cost and expense of the Licensee.

6. The City reserves the right to request removal of the improvements depicted in **Exhibit "A"** in the event that the City needs to utilize the property for City purposes, such as road, bike path, public utility installation or maintenance, drainage improvement or other public uses. The City shall endeavor to give at least thirty (30) days prior notice to the Licensee. If the improvements are not removed within the time specified by the City, or in cases where emergency work by the City becomes necessary the City may remove or cause to be removed the improvements without any liability to the City or obligation to replace same upon completion of the City project.

7. The Licensee agrees that no improvements shall be made except as depicted in **Exhibit "A"** or subsequently approved amendments thereto. However, improvements may be maintained, repaired, replaced and removed.

8. The license granted by this License Agreement shall be effective during the period from the date of execution by both parties until terminated in accordance with the provisions specified herein.

9. Any party may terminate this License Agreement upon giving thirty (30) days prior written notice to the other party, after which time this License Agreement shall be of no force and effect. Upon termination by either party, the City shall have the option of requiring all improvements to be removed or abandoned in place by the Licensee or maintained in their present state by the City and without further right or obligation by the Licensee. If the Licensee is voluntarily or involuntarily dissolved or ceases to function in accordance with the articles of incorporation and by-laws of such corporation, or Licensee terminates this Agreement or otherwise fails to remain in good

standing and in compliance with this Agreement, the City may maintain and repair the improvements and the City shall not be obligated to either maintain or repair the improvements and the City shall not be liable for either undertaking or failing to maintain or repair the improvements. All costs and expenses of the City resulting from maintenance or repair of the improvements, including administrative expenses, attorney's fees and costs, and expenses incurred in establishing and operating a special district, shall be chargeable to and assessed by the City jointly and severally against all lots located within the development, subdivision or project located within the property described in **Exhibit "C."** The City shall have the right to enforce collection of assessments for such costs and expenses by a lien jointly and severally against the lots, which lien shall include interest at the then highest lawful rate of interest and attorneys' fees and costs for collection thereof. The City shall have the right to establish a special district and to utilize any methods or procedures provided by law or ordinance for imposition and collection of the assessments described herein.

10. This license is given to the Licensee as an accommodation to the Licensee without any consideration. The Licensee acknowledges the legal title of the City to the right-of-way property described herein and agrees never to deny such title or to claim title in the Licensee's name.

11. The license is personal to the Licensee and shall not inure to the successors or assigns of the Licensee. The rights, privileges and permission granted herein shall not be assignable by the Licensee in whole or in part. Upon the sale or transfer by the Licensee of title to the real property adjoining the right-of-way upon which the improvements are located, the City shall have the immediate right to remove the improvements for which this license is granted; subject, however, to application made by the successor property owner for and due diligence in obtaining approval by the City of a new license agreement for the existing improvements to remain in the right-of-way.

12. The Licensee shall exercise the rights, privileges and permission granted herein at the Licensee's own risk. The Licensee shall not claim any damages from the City for any injuries or damages in connection with or on account of the exercise of such rights, privileges or permission, the condition of the City's property, or the use of the property. The Licensee shall indemnify and hold harmless the City, its officers, employees and agents, from and against all claims, damages, losses and expenses, including reasonable attorneys' fees and costs, arising out of, resulting from, or in any way connected with the condition of the City's property, the use of the property, the exercise of the license granted by this License Agreement, the failure on the part of the Licensee to comply with any of the provisions specified herein, or the City's removal of any improvements depicted in **Exhibit "A"** or otherwise permitted by this License Agreement. The City shall not be liable to the Licensee if for any reason the Licensee's use of the property is hindered or disturbed.

13. All notices required to be given by any party shall be in writing, addressed to all other parties, and delivered by certified mail, telegram or in person to: Attention of City Manager, City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, for the City; and to Donna Joyce Davis, Registered Agent for Countryside PUD Unit III-A Homeowners Association, Inc., 938-A Meadow View Drive, Port Orange, FL 32127, and James J. Kearns, Esq., Registered Agent for Countryside PUD Residential Homeowners Association, Inc., 138 Live Oak Ave., Daytona Beach, FL 32114, for the Licensee, or as otherwise designated in writing to all respective parties.

14. This Agreement shall be recorded in the Public Records of Volusia County, Florida. Upon execution of this Agreement, the Owner agrees to pay the City an amount equal to the applicable cost of recording this Agreement in the Public Records of Volusia County, Florida.

15. This License Agreement constitutes the entire agreement between the parties. There are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof. This License Agreement may be amended or modified only by an instrument of equal formality signed by the respective parties.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on the respective dates below.

WITNESSES:

Printed Name: _____

Printed Name: _____

Printed Name: _____

Printed Name: _____

LICENSOR

CITY OF PORT ORANGE, FLORIDA
a chartered municipal corporation

By: _____
Allen Green, Mayor

Attest: _____
Kenneth W. Parker, City Manager

Date: _____

(CORPORATE SEAL)

Patricia A. Randall
Printed Name: PATRICIA A. RANDALL

Kim E. Boston
Printed Name: KIM E. BOSTON

Printed Name: _____

Printed Name: _____

Patricia A. Randall
Printed Name: PATRICIA A. RANDALL

Kim E. Boston
Printed Name: KIM E. BOSTON

Printed Name: _____

Printed Name: _____

LICENSEES:

COUNTRYSIDE PUD UNIT III-A
HOMEOWNERS ASSOCIATION, INC.

(Owner/ Licensee)

By: Norma Lopez Davis
Title: President

Attest: _____
Title: _____

Date: 4-18-07

(CORPORATE SEAL)

LICENSEES:

COUNTRYSIDE PUD RESIDENTIAL
HOMEOWNERS ASSOCIATION, INC.

(Association/ Licensee)

By: Janice J. Kiner
Title: President

Attest: _____
Title: _____

Date: 4-18-07

(CORPORATE SEAL)

[Notary Acknowledgments on next two pages.]

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was sworn to and acknowledged before me this 18th day of April, 2007, by Janice J Kiner Pres. and Patricia Randall Kim Boston, the President and Witnesses, respectively, duly authorized by corporate resolution to execute the foregoing LICENSE AGREEMENT on behalf of the Association/Licensee, **COUNTRYSIDE PUD RESIDENTIAL HOMEOWNERS ASSOCIATION, INC.**, a Florida not-for-profit corporation, and who are personally known to me, or have produced the following as identification _____.



VICKIE ROBBINS
MY COMMISSION # DD 208584
EXPIRES: May 10, 2007
Bonded Thru Budget Notary Services

Vickie Robbins
Notary Public, State of Florida at Large
Printed name, stamped commission seal and term expiration:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was sworn to and acknowledged before me this 18th day of April, 2007, by Donna Davis and Patricia Randall, the President and Witnesses, respectively, duly authorized by corporate resolution to execute the foregoing LICENSE AGREEMENT on behalf of the Owner/Licensee, **COUNTRYSIDE PUD UNIT III-A HOMEOWNERS ASSOCIATION, INC.**, a Florida not-for-profit corporation, and who are personally known to me, or have produced the following as identification _____.

Boston

Kim



VICKIE ROBBINS
MY COMMISSION # DD 208584
EXPIRES: May 10, 2007
Bonded Thru Budget Notary Services

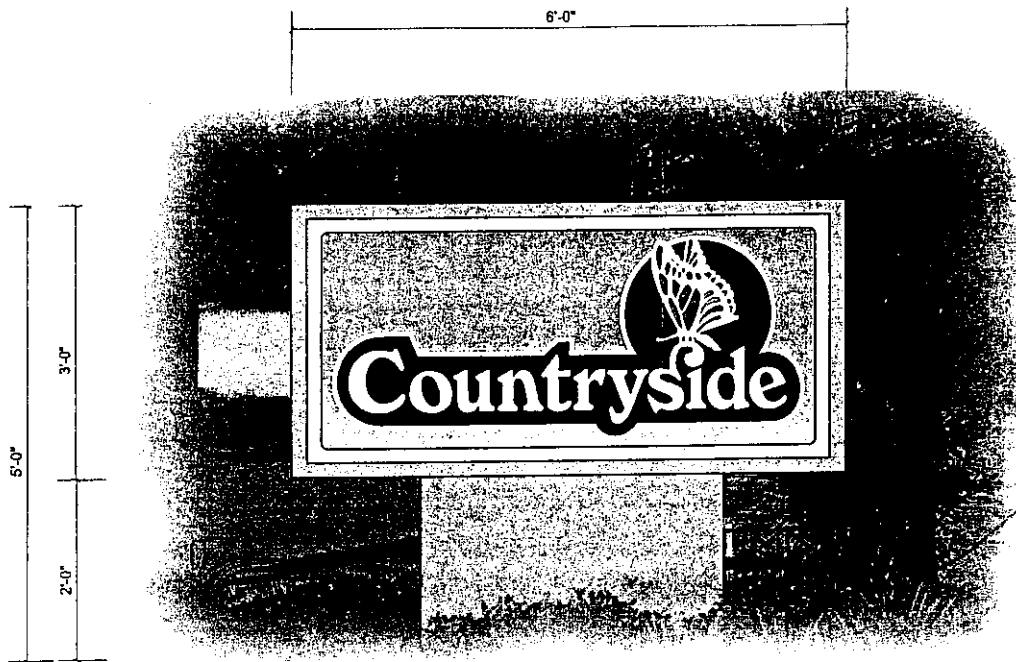
Vickie Robbins
Notary Public, State of Florida at Large
Printed name, stamped commission seal and term expiration:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by Allen Green and Kenneth W. Parker, the Mayor and City Manager, respectively, duly authorized to execute the foregoing LICENSE AGREEMENT on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who are personally known to me, or have produced _____ as identification.

Notary Public, State of Florida at Large
Printed name, stamped commission seal and term expiration:

**EXHIBIT A
Improvement Plan**



SPECIFICATIONS

DON BELL SIGNS TO FABRICATE AND INSTALL ONE (1) D/F INTERNALLY ILLUM. SIGN

HIGH INPUT ILLUM. BY 800MA FLUOR. LAMPS 12" ON CENTER

ALUM. CABINET WITH 2" RETAINERS FIN MATTHEWS ENAMEL BEIGE (EXACT COLOR TO BE DETERMINED)

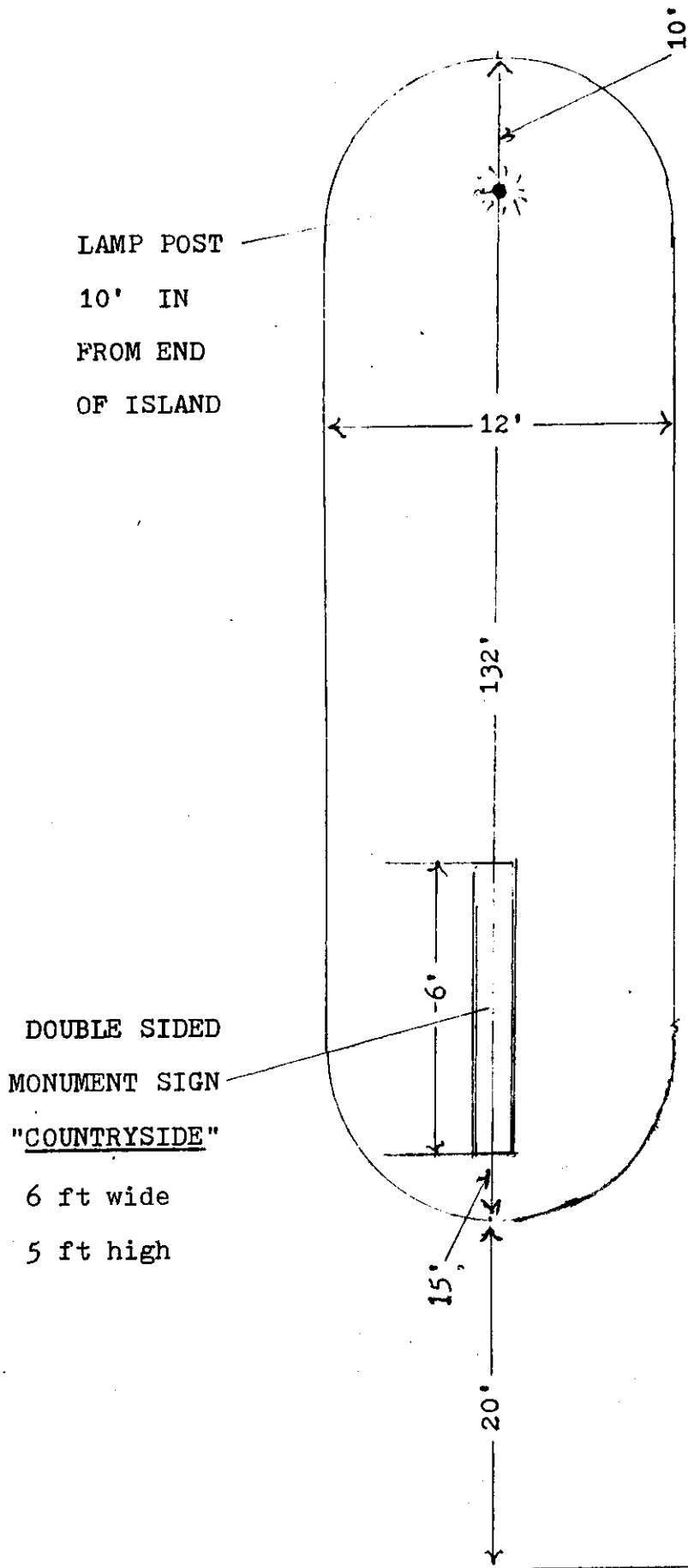
MAIN ID CABINET: PANFORMED POLYCARBONATE FACES PAINTED 2ND SURFACE WHITE WITH 3M TRANLUCENT VINYL COPY / OR COMPUTER DIGITALLY PRINTED GRAPHICS APPLIED 1ST SURFACE

PANEDGE - WHITE

FAB. ALUMINUM PYLON - MED GAND TEXCOAT BEIGE (EXACT COLOR TBD).

COLORS: (ALL COLORS TO BE DETERMINED)

Order # 12887
 Series - 102
 Mat. 10/10/08
 1)
 2)
 3)
 4)
 5)
 SHEET 1 OF 1
 WEST COUNTRYSIDE
 POBY GRANITE
 AS SHOWN
 EAST WIND
 EAST ESTABLISHMENT
 CORN. 1
 DON BEL
 155 ORA TALLE
 2000 2000 11 1 2000
 104-701
 104-701
 104-701



LAMP POST
10' IN
FROM END
OF ISLAND

DOUBLE SIDED
MONUMENT SIGN
"COUNTRYSIDE"
6 ft wide
5 ft high

NOVA ROAD

EXHIBIT A

NOT TO SCALE

EXHIBIT B
 Sketch/Description
Village Trail a 100-ft. Right-of-Way

