



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6 / 19 / 07

SUBJECT: PROPOSED LICENSE AGREEMENT FOR COUNTRYSIDE PUD UNIT XII-A
SUBDIVISION / EYEBROW CUL-DE-SAC SOUTH WATERBRIDGE CIRCLE

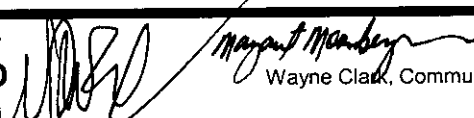
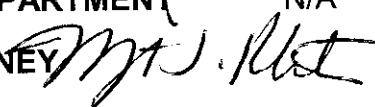
DEPARTMENT: COMMUNITY DEVELOPMENT

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 Unit XII-A Subdivision; subject to the amendment as shown in underlining in paragraph 11.

SUMMARY: Countryside PUD Unit XII-A (Waterbridge) Homeowners Association is requesting permission to install palm trees and landscaping in the eyebrow cul-de-sac located along South Waterbridge Circle. Although there has been landscaping in the cul-de-sac before there is no record of a license agreement. Previous plantings died off and the HOA would like to replant to beautify their subdivision. The proposed landscaping is drought tolerant and will require very little maintenance.

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 6/11/07
FINANCE DEPARTMENT	N/A	Approved as to Budget Requirements	Date
CITY ATTORNEY		Approved as to Form and Legality	Date 6-8-07
CITY MANAGER		Approved Agenda Item For:	

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

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

This Document Prepared by:
Margaret T. Roberts, City Attorney
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") as "Licensor," and Countryside PUD Unit XII-A Homeowners Association, Inc., a Florida corporation ("Association"), 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 improvement plan encompasses part or all of a City right-of-way known as South Waterbridge Circle, a City right-of-way varying in width from 50 feet to 120 feet, as depicted in **Exhibit "B,"** attached hereto and incorporated herein by reference; and

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 South Waterbridge Circle 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 and landscaping, 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 jointly and severally assumes all responsibility for the maintenance and, if necessary, replacement of all improvements depicted in **Exhibit "A."**

4. 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.

5. 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.

6. 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.

7. 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.

8. 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. The City reserves the right to file a special assessment lien for all costs and expenses resulting from the City's maintenance, repair or removal of the Improvements, including administrative expenses, attorney's fees and costs, upon consideration and approval of the City Council.

9. 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.

10. 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.

11. 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, hold harmless and defend 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.

12. 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: City Manager, City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, for the City; and to Michele Barkin, Registered Agent for Countryside PUD Unit XII-A Homeowners Association, Inc., 1166 Pelican Bay Drive, Daytona Beach, FL 32119, for the Licensee, or as otherwise designated in writing to all respective parties.

13. 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.

14. 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.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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: _____

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, commission and expiration:

WITNESSES:

Mark Lohive
Printed Name: Mark Lohive

Julius Ross
Printed Name: JULIUS ROSS

Mark Lohive
Printed Name: Mark Lohive

Julius Ross
Printed Name: JULIUS ROSS

LICENSEE:

COUNTRYSIDE PUD UNIT XII-A
HOMEOWNERS ASSOCIATION, INC.,
a Florida non-profit corporation

By: Joan M. Ross
Title: President

Attest: Valerie Flynn
Title: Vice Pres.

Date: 4/24/07

(CORPORATE SEAL)



STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was sworn to and acknowledged before me this 24th day of April, 2007, by Joan M. Ross and Valerie Flynn, the Mark Lohive and Julius Ross respectively, duly authorized by corporate resolution to execute the foregoing LICENSE AGREEMENT on behalf of Countryside PUD Unit XII-A Homeowners Association, Inc., a Florida non-profit corporation, and who are personally known to me, or have produced the following as identification _____.

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



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

EXHIBIT A

Circle Area
490 sq ft
25' Diameter

Cul-De-Sac of S Waterbridge Circle

