

RIGHT OF WAY USE AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 21st day of June, 2022, between the City of Dunedin, Florida, a municipal corporation ("City" or "Grantor") of 542 Main Street, Dunedin, Florida 34698 and Scotsdale Bluffs Homeowners' Association, Inc., whose address is 24701 US Highway 19 N, Suite 102, Clearwater, FL 33763 ("Grantee").

WITNESSETH:

WHEREAS, Grantee is an existing homeowners' association tasked with the maintenance and operation of the Scotsdale Bluffs community (the "Community"), located in Dunedin, Florida; and

WHEREAS, Grantee has, since its original development in 1996, maintained the front entryway signage, front entryway landscaping, front entryway lighting, and front entryway irrigation (collectively the "Entryway Infrastructure Improvements") for the Community; and

WHEREAS, Grantee has requested that the City allow it to modify the Entryway Infrastructure Improvements at the entryway to the Community, an improved public right-of-way, located at the intersection of Scotsdale Street and Bluffs Circle, and as more particularly described and identified on the survey attached hereto as Exhibit A (hereinafter referred to as the "Property") purposes of installation, renovation and maintenance of the Entryway Infrastructure Improvements; and

WHEREAS, the City and the Grantee, for a mutual consideration, desire to enter into this right-of-way use agreement; and

WHEREAS, the City has the power to grant a revocable license for the use of the City rights-of-way; and

WHEREAS, the license granted hereunder is granted pursuant to the general legislative, administrative and proprietary powers of the City; and

WHEREAS, the license granted hereunder is subject to all applicable provisions of the City of Dunedin **Code of Ordinances** and the Land Development Code of the City of Dunedin (LDC), as amended from time-to-time, and, in the event of any conflict between this right-of-way use agreement, the provisions of the City of Dunedin Code of Ordinances and LDC, as applicable, will prevail to the extent of such conflict; and

WHEREAS, the City is willing to allow the use of the Property for the purposes referenced above.

NOW THEREFORE, in consideration of the mutual promises and covenants herein, it is agreed as follows:

1. Recitals. The recitals set forth above are incorporated herein by reference.
2. Grant of Use.
 - a. The City does hereby grant to the Grantee, and the Grantee does hereby accept from the City, a revocable license for the use of the Property for the purposes of installation, renovation and maintenance of Entryway Infrastructure Improvements, including the installation and maintenance of signage, landscaping, lighting and irrigation. Grantee acknowledges that Grantee, under Florida law, acquires no prescriptive rights or other property rights or claims by virtue of this license.
 - b. This license shall continue until a written notification of its termination by the City to the Grantee. This license is revocable with or without cause or reasonableness at the will and at the sole discretion of the City Commission of the City of Dunedin. The Grantee shall have no procedural due process rights or claims arising from the procedure used to revoke this license from the City and the Grantee does hereby specifically waive any claim or right arising from such termination procedure. The issuance of this license in no way grants the Grantee or its successors any right to

the continuation of this license. The revocable license shall be revoked only upon a vote of the City Commission authorizing such revocation. Regardless of any investment made in the property by the Grantee, the Grantee shall have no right or claim for damages arising from the termination of this license, regardless of the amount of investment by the Grantee and the duration of use of the Property by the Grantee. No representations or predictions made by the City or any of its officers, employees, charter officials or agents shall give any right of use or any right of damages for losses sustained by the Grantee because of the revocation of this license. In the event that this license is revoked, the Grantee shall have a period of thirty days from the date of such revocation to remove any improvements that it has placed upon the property. In the event that the Grantee fails to remove the improvements placed on such property on or before the expiration of the thirty-day removal period set forth above, the City may remove such improvements as it deems appropriate and the Grantee shall be liable for the cost of such removal. In the event that the Grantee fails to remove said improvements, they shall be deemed to have been abandoned and, at the option of the City, such improvements have become the property of the Grantor.

- c. Grantee shall further not erect any devices, posts, poles, standards or other improvements on the Property that will impede the flow of or the City's use of the Property, or that would obstruct any visibility triangle required by the LDC.
- d. Grantee shall be responsible for all restoration work required.

3. Compliance with Code. The Grantee's uses shall comply with the City of Dunedin Code of Ordinances, the LDC, and all applicable building codes, zoning provisions, Florida

Statutes, Florida Administrative Code provisions and other state, federal or local laws and ordinances, as may be amended from time to time.

4. Installation and Maintenance. The Grantee shall be obligated at its sole expense to install, maintain and replace the Entryway Infrastructure Improvements and to restore the surface of the right-of-way in accordance with the construction plans for the Entryway Infrastructure Improvements as approved by the City.
5. Indemnification. The Grantee agrees to indemnify and hold harmless, assume legal liability for and defend the City, its City Commission, Mayor, any and all City departments or subdivisions, its officers, employees, agents, servants, and successors and assigns from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, in law or in equity, including but not limited to attorney's fees at trial and appellate levels, reasonable investigative and discovery costs, court costs or claims for bodily injury or death of persons and for loss of or damage to property, of every kind and nature whatsoever, which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the negligent acts or omissions or other wrongful conduct of the Grantee, its employees and agents in connection with the use or maintenance of the right-of-way including, without limitation, any claims made by Grantee's employees against the City, its City Commission, Mayor, any and all City Departments or subdivisions, its officers, employees, agents, servants, and successors and assigns. In addition, Grantee hereby agrees to waive its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The parties each agree to give the other party prompt notice of any claim coming to its knowledge that in any way directly or indirectly affects the other party. Nothing contained in this Agreement, and specifically this provision

requiring Grantee to indemnify the City, is intended to nor shall it be construed as an additional waiver of sovereign immunity by the City beyond the City's expressed written contractual obligations contained within this Agreement; nor shall it be construed as a waiver of any defenses or limitations to any claims, including those based on the doctrine of sovereign immunity or section 768.28, Florida Statutes.

6. Evidence of Insurance. The Grantee shall provide to City, upon request, written evidence of the existence of general liability insurance with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. The Grantee shall provide the City with a Certificate of Insurance evidencing said policy and that the City has been named as an additional insured. The insurance company shall be rated no lower than A-XII by a rating firm such as A.M. Best or its equivalent, latest edition. Said Certificate also shall provide that the City shall be given 30 days written notice if the policies are canceled or changed in any way. The Grantee shall maintain the insurance coverage during the entire term of this Agreement. Failure to maintain the insurance coverage shall be deemed a default of this Agreement.
7. Limit Obstruction of Right-of-Way. Grantee shall limit obstruction of the right-of-way during construction as much as possible.
8. Waiver of Right to Compensation. In the event the City, the State of Florida or any other governmental agency determines that the Property which is the subject matter of this Agreement is needed for use by the City, State of Florida or any other governmental agency, then Grantee hereby agrees to waive any right to compensation it may have related to Grantee's use of the right-of-way.
9. Attorney's Fees. In the event the City employs an attorney to enforce any of the conditions of this Agreement, or to enforce any of the Grantee's covenants hereunder, or to enforce

any of the City's rights, remedies, privileges or options, at law or in equity, the City shall be entitled to reimbursement from the Grantee of all costs and expenses incurred or paid by City in so doing, including without limitation, all attorneys and paralegal fees and costs whether the matter is settled privately, by arbitration, or by legal action at the trial court level and at any and all appellate Court levels in all matters of collection and enforcement, construction and interpretation before, during and after suit, trial post-trial and all appellate proceedings, as well as any appearances in and connected with any bankruptcy proceedings or creditors' reorganization or similar proceedings.

10. Severability. Should any section or any part of any section of this Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such determination shall not render void, invalid, or unenforceable any other section or any part of any section in this Agreement.
11. No Violation of Prior Agreements. The Grantee represents to the City that execution and delivery of this Agreement by the Grantee will not violate any provisions of organization of the Grantee, including, without limitation, Articles of Organization, By-laws, or the Declaration of Covenants, Conditions and Restrictions of the Grantee, or any provision in any agreement, mortgage, lease lien, judgment, debt, decree or other instrument to or by which the Grantee is a party or is bound.
12. Notices. All notices, requests, demands, deliveries and other communications which are required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally, or when mailed, registered or certified first class postage pre-paid, set forth below:

If to the City, to:

City of Dunedin
542 Main Street
Dunedin, FL 34698
Attn: Jennifer K. Bramley, City Manager

With a Copy to:

Bryant Miller Olive P.A.
201 N. Franklin Street, Suite 2700
Tampa, FL 33602
Attn: Nikki C. Day, B.C.S.

If to the Grantee, to:

Scotsdale Bluffs Homeowners' Association, Inc.
c/o Ameri-Tech Community Management
24701 US Highway 19 N, Suite 102
Clearwater, Florida 33763
Attn: Jenny Kidd, LCAM

With a Copy to:

Cianfrone, Nikoloff, Grant & Greenberg, PA
1964 Bayshore Blvd, Suite A
Dunedin, Florida 34698
Attn: Scott Gross, Esq.

13. Headings. The headings contained in this Agreement are inserted for convenience of reference only and shall not be a part or control or affect the meaning hereof. All references herein, if any, to paragraphs, articles or sections are to the paragraphs, articles or sections of this Agreement. All references herein to Exhibits, if any, are to the Exhibits attached hereto, each of which shall be incorporated into and deemed to be a part of this Agreement.
14. Execution. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
15. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

16. Governing Law, Jurisdiction. This Agreement is made in Dunedin, Florida, and shall be governed by the laws of the State of Florida. Venue for any action brought in state courts shall be in Pinellas County, Clearwater Division. Venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division, unless a division shall be created in St. Petersburg or Pinellas County, in which case the action shall be brought in that division.
17. No Third Party Beneficiary Rights. This Agreement shall create no rights or claims whatsoever in any person other than a party hereto and their permitted successors and assigns.
18. Entire Agreement, Modification, No Waiver. This Agreement supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Agreement, constitutes the entire Agreement of the parties relating to the subject matter hereof. This Agreement may not be altered or amended except in writing signed by the parties hereto. No waiver of any of the terms or conditions of this Agreement shall be effective unless in writing and executed by the party to be charged therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Agreement.
19. Public Records Law. All documents created pursuant to this Agreement are public records and the Grantee acknowledges to abide by the Florida law governing public records with

regard to this Agreement and to incorporate all provisions on section 119.0701, Florida Statutes should Grantee ever be determined to be acting on behalf of the City under this Agreement.

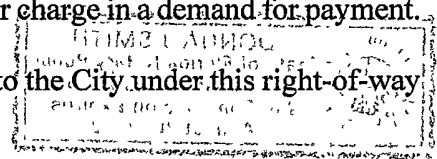
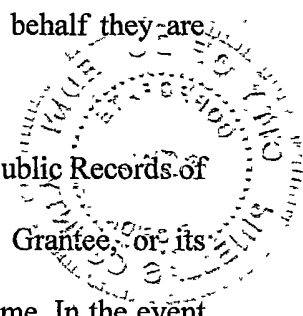
20. Assignment. Except as hereafter provided, this Agreement may not be assigned by either party except with the prior written consent of the other party.

21. Authority to Act. Each party to this Agreement represents and warrants to the other party that all appropriate authority exists so as to duly authorize the persons executing this Agreement to so execute the same and fully bind the party on whose behalf they are executing.

22. Recording. This right-of-way use agreement shall not be recorded in the Public Records of Pinellas County, Florida by the Grantee and any recordation by the Grantee, or its successors or assigns, shall operate as an immediate revocation of the same. In the event that the City chooses to record this right-of-way use agreement, a subsequent document stating that such right-of-way use agreement has been revoked by the City Commission of the City of Dunedin shall be sufficient to give notice of such revocation.

23. Taxes. If, because of Grantee's use of Property, the Property shall become subject to the payment of ad valorem taxes, or for any other tax, license, or fee of any kind or nature whatsoever, including sales taxes and intangible taxes, then, and in that event, the Grantee shall pay the City the amount of any ad valorem taxes levied on said property or any part thereof, or any other cost or fee, which are billed to the City by Pinellas County or to the Grantee by Pinellas County, said payment to be made within fifteen days of the City sending to the Grantee a copy of the tax bill or other bill or charge in a demand for payment.

Any amount of taxes or other fees due from the Grantee to the City under this right-of-way

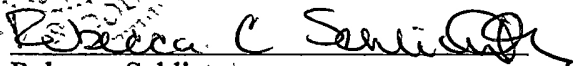


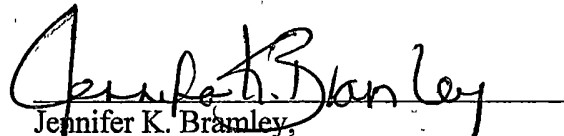
use agreement, which is not paid when due, shall bear interest at the rate of 18% per annum from the date due until paid, together with a late charge in the amount of \$150.00 and any attorneys fees and other costs expended by the City involving collecting such delinquency, provided that such interest, late charges, and attorney's fees and costs shall be automatically reduced by such amount is necessary to cause such charges to be in compliance with usury laws.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

CITY OF DUNEDIN, FLORIDA,
A Municipal corporation.

ATTEST:


Rebecca Schlichter,
City Clerk


Jennifer K. Bramley,
City Manager

APPROVED AS TO FORM:



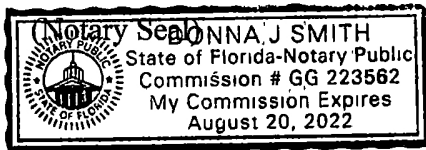
City Attorney


STATE OF FLORIDA
COUNTY OF PINELLAS

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization this 21st day of JUNE, 2022, by Jennifer Bramley as City Manager for the City of Dunedin, who is

Personally Known OR

Produced Identification n/a
Type of Identification Produced





Notary Public

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

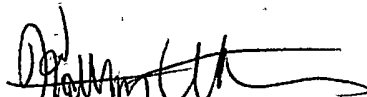
WITNESS:

SCOTSDALE BLUFFS HOMEOWNERS' ASSOCIATION, INC.
A Florida not for profit corporation.

ATTEST:



Witness STEVEN KEBLIN



Kathryn Vetter,
President/Director

STATE OF FLORIDA
COUNTY OF PINELLAS

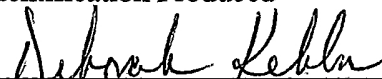
Sworn to (or affirmed) and subscribed before me by means of physical presence or

online notarization this 20th day of MAY, 2022, by Kathryn Vetter, President/Director of Scotsdale Bluffs Homeowners' Association, Inc., who is personally known to me or produced identification N/A.

Type of Identification Produced

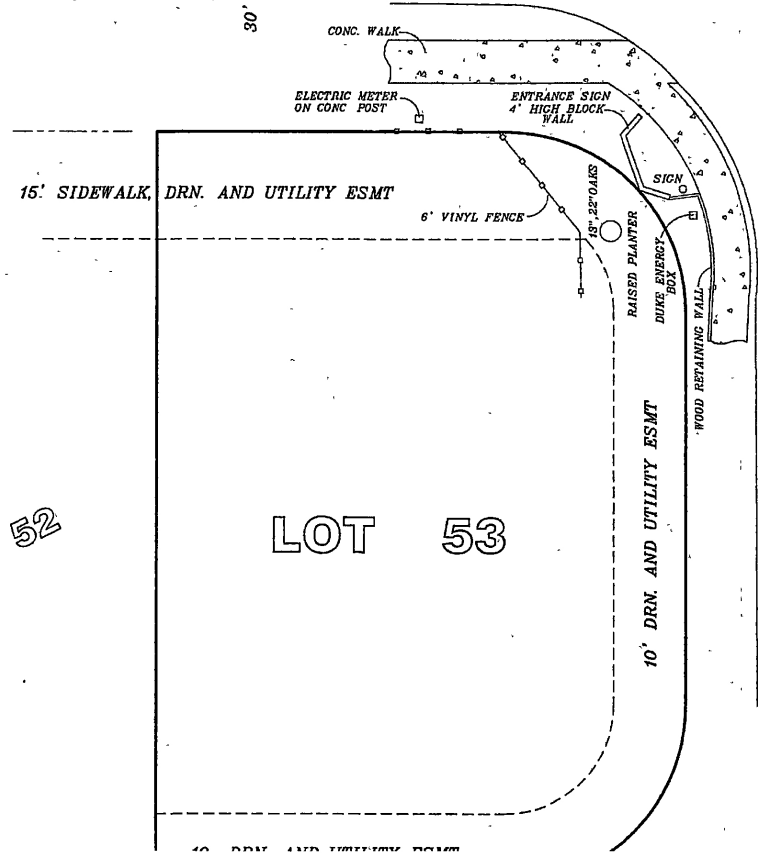


(Notary Seal)



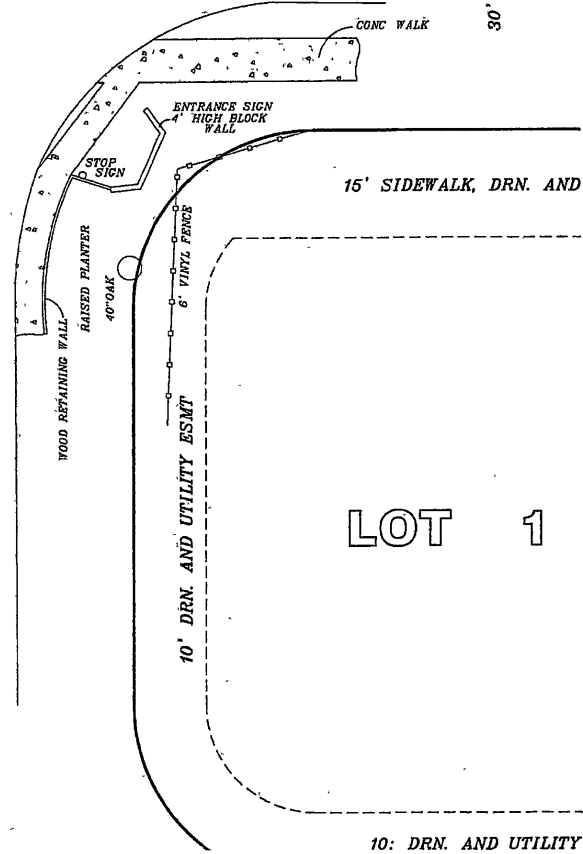
Notary Public – State of Florida
My Commission Expires: 4/30/25

SCOTSDALE STREET



BLUFFS CIRCLE

50'



52

LOT 53

LOT 1

10' DRN. AND UTILITY