

CITY OF CAPE CANAVERAL
RIGHT-OF-WAY USE AGREEMENT
AND RESTRICTIVE COVENANTS
Brick Pavers in Right-of-Way

THIS RIGHT-OF-WAY USE AGREEMENT and RESTRICTIVE COVENANTS ("Agreement") is entered into this _____ day of _____, 20____, by the City of Cape Canaveral ("City"), a Florida municipal corporation and _____, hereinafter referred to as the "Owner."

RECITALS

WHEREAS, the Owner is the fee simple titleholder of the Property located at _____, Cape Canaveral, Brevard County, Florida, as legally described in Exhibit A, attached to and made a part hereof; and

WHEREAS, the Owner desires to install brick pavers in the right-of-way, specifically the driveway apron for the Property; and

WHEREAS, the Owner and his, her, or its successors in interest and assigns, (hereinafter "Owner"), shall be required to comply with the following maintenance requirements for the brick pavers, upon installation and in the future until they are removed; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the City and Owner agree as follows:

1.0 Brick Pavers Permitted. As a condition of Permit No. _____, approved by the City, Owner is permitted to install brick pavers upon the driveway apron located within the City right-of-way ("Brick Paver Improvements"), subject to the restrictive covenants set forth in Section 2.0 below.

2.0 Restrictive Covenants. Owner hereby makes and declares the following restrictive covenants which shall run with the title to said Property and shall be binding on the Owner, including its successors in interest and assigns, if any, until Brick Paver Improvements are removed:

2.1 The Owner shall maintain in a good, safe, and attractive condition, at its sole cost and expense, the Brick Paver Improvements.

2.2 The Owner agrees to repair, at its sole cost and expense, any and all damage, if any, to the City's right-of-way resulting from the installation, use, maintenance, or repair of the Brick Paver Improvements.

2.3 The Owner agrees that any maintenance and repair of the Brick Paver Improvements shall conform to specifications and requirements established in the City Code of Ordinances and/or Land

Development Code. This Restrictive Covenant shall not be construed as a waiver of any permit requirements for such maintenance and repair.

2.4 The Owner agrees to be responsible for the replacement and/or repair of the Brick Paver Improvements if the driveway apron is removed or damaged during the course of the City's maintenance, improvement or installation of public infrastructure systems in the City right-of-way. The Owner shall further be responsible for reimbursement to the City for any unusual costs incurred by the City to protect the Brick Paver Improvements from harm during the course of the City's maintenance, improvement or installation of public infrastructure systems in the right-of-way.

2.5 Should the Owner decide to remove the Brick Paver Improvements, the driveway apron shall be restored in such a manner to be a minimum of six inches thick, 3000 psi concrete, with six by six # ten, welded wire mesh, or in accordance with the City's then-current standard for driveway apron construction, at the Owners sole cost and expense.

2.6 The Owner shall be solely liable, and agrees to be solely liable for, and shall indemnify, defend and hold the City harmless from any and all loss, damage, action, claim, suit, judgment, cost or expense for injury to persons (including death) or damage to property (including destruction) in any manner resulting from or arising out of the installation, maintenance (failure to maintain), use, existence of or removal of the Brick Paver Improvements within the City's right-of-way or easements. The foregoing shall include any loss, damage or cost and expense incurred by the Owner or third parties.

3.0 Independent Contractor. The Owner shall act as an independent contractor, and not as an employee of the City, in performing its obligations pursuant to the Permit identified herein or pursuant to the Restrictive Covenants.

4.0 Recordation. The City shall record this Agreement and Restrictive Covenants with the Clerk of the Circuit Court of Brevard County, Florida, and Owner shall pay any and all expenses associated with their filing and recording.

5.0 Term and Termination. This Agreement and Restrictive Covenants herein shall remain in effect until the Brick Paver Improvements are removed from the Property.

6.0 Governing Law and Venue. This Agreement and Restrictive Covenants shall be governed by the law of the State of Florida. Venue shall only be properly placed in Brevard County, Florida for state court actions and Orlando, Florida for federal actions.

IN WITNESS WHEREOF, the Owner has read this Agreement and Restrictive Covenants and has hereto affixed their signature.

WITNESSES:

Witness Signature

OWNER

Witness Name Typed/Printed

Owner's Address

Witness Signature

City State Zip

Witness Name Typed/Printed

The State of Florida
County of _____

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that _____ personally
(Name)

appeared and is known to me to be or who proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Personally known: _____
Type of Identification Produced _____

Executed and sealed by me at _____, Florida on ____, 20__.

Notary Public in and for
The State of _____
My commission expires: _____

[SEAL]

The State of Florida
County of _____

I certify that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, that _____ personally

(Name)

appeared as _____ for _____

(Officer)

(Name of Corporation/Partnership)

known to me to be or who proved to my satisfaction that he/she is the person described in and who executed the foregoing instrument.

Personally known: _____

Type of Identification Produced _____

Executed and sealed by me at _____, Florida on _____, 20__.

Notary Public in and for

The State of _____

My commission expires: _____

[SEAL]

WITNESSES:

CITY OF CAPE CANAVERAL, FL

Print Name: _____

By: _____
Todd Morley, City Manager

Print Name: _____

Date: _____, 20__

**STATE OF FLORIDA
COUNTY OF BREVARD**

I HEREBY certify that the foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Todd Morley, as City Manager of the City of Cape Canaveral, Florida, a Florida municipal corporation. He is personally known to me.

Notary Public, State of Florida

Print Name _____

My commission expires: _____

EXHIBIT A – RESTRICTIVE COVENANTS
Legal Description of Property