

**CONSTRUCTION AND MAINTENANCE AGREEMENT
FOR
RIGHT-OF-WAY IMPROVEMENTS
FOR
116th CT. N.E. AND 8th TERR. N.E. (RAVEN CREST SUBDIVISION)**

MANATEE COUNTY, FLORIDA
RAVEN CREST HOMEOWNERS ASSOCIATION, INC.

THIS AGREEMENT (“Agreement”) is made and entered into by and between Raven Crest Homeowners Association, Inc., a Florida Not-For-Profit Corporation (the “Independent Contractor”), and Manatee County, a political subdivision of the State of Florida, hereinafter referred to as the “County”, as of July 24, 2018.

W I T N E S S E T H:

WHEREAS, the Independent Contractor desires to construct and/or to assume the maintenance responsibilities for improvements installed on the public right(s)-of-way of 116th Ct. N.E. and 8th Terr. N.E. (RAVEN CREST SUBDIVISION), such improvements to be constructed and maintained in substantial compliance with the Schedule of Improvements and Maintenance attached hereto as Exhibit “A” and made a part hereof, and hereinafter referred to as the “Improvements”; and

WHEREAS, the Independent Contractor will pay for the construction and/or maintenance of the Improvements; and

WHEREAS, the County agrees to allow the Improvements to be constructed within the County's right(s)-of-way as depicted on Exhibit “B” only if the Independent Contractor will execute and deliver this Agreement relating to the maintenance thereof and providing that the Independent Contractor agrees to hold the County harmless; and

WHEREAS, the County and the Independent Contractor desire to enter into this Agreement in order to memorialize their rights and obligations with respect to the Improvements.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Independent Contractor and County hereby agree as follows:

1. **Construction and Maintenance.** It is and shall continue to be the sole obligation of the Independent Contractor to construct and maintain the Improvements, including any and all

traffic signs and sign supports, structures, associated lighting and irrigation facilities, and other ancillary items, as depicted in the Exhibits hereto, for so long as the Independent Contractor desires to have such Improvements remain upon the County's right-of-way. In connection therewith, the Independent Contractor shall maintain the Improvements in a neat and attractive condition and good repair at its sole cost and expense.

2. **Limitation of Rights.** The Independent Contractor understands and agrees that the rights and privileges granted in this Agreement are limited by the County's rights, title and interest in the right-of-way to be entered upon and used by the Independent Contractor, and the Independent Contractor will at all times assume all risk of and indemnify, defend, and hold harmless the County, its officials, its employees and its agents from and against any loss, damage, cost, expense, claim, suit or judgment arising in any manner on account of the exercise or attempted exercise by the Independent Contractor of the aforesaid rights and privileges.

3. **Utilities Located in Rights-of-Way.** Prior to any excavation, the Independent Contractor shall comply with the One Call Notification Procedures in accordance with Florida Statute 556.104. Further, the Independent Contractor agrees that it has confirmed with Manatee County the location of all known existing utilities, both aerial and underground. The Independent Contractor further agrees that construction and/or maintenance of an irrigation system and other improvements within the right-of-way shall not interfere with any existing facilities and underground utilities.

4. **Removal or Relocation.** The County may require, upon a minimum thirty (30) days written notice to the Independent Contractor, that the Independent Contractor perform maintenance, repair, relocation or removal of the Improvements for good cause. Upon receipt of such notice, the Independent Contractor shall take or cause the necessary corrective actions within such reasonable time as may be specified in such notice. After expiration of such reasonable time, but no sooner than thirty (30) days, if the Independent Contractor fails to take the necessary corrective actions, County may cause the maintenance, repair, relocation, or removal of the Improvements in such a manner as the County, in its sole discretion, deems appropriate, and at the expense of the Independent Contractor.

5. **Reservation of Right; Public Safety.** County specifically reserves the right to take such action as it deems necessary, in its sole discretion, and without notice to Independent Contractor in order to protect the public from unsafe conditions that may arise in any manner on account of the construction and/or maintenance of the Improvements by the Independent Contractor.

6. **Permits Required.** Independent Contractor acknowledges and agrees that no permitting approval is given hereby for the Improvements. No Improvements shall be placed in the right-of-way unless and until all proper authorizations have been obtained and all applicable standards and requirements have been met, including without limitation those set forth in the Manatee County Comprehensive Plan, the Manatee County Land Development Code, the County's Highway and Traffic Standards Manual, any approved general development plan, preliminary or final site plan, or right-of-way use permit, and all conditions or stipulations thereto.

7. **Remedies.** Should the Independent Contractor fail or refuse to maintain, repair, relocate or replace the Improvements, nothing herein shall be construed as affecting the County's right to resort to any and all legal and equitable remedies against the Independent Contractor, including specific performance, to which the Independent Contractor hereby agrees.

8. **Indemnification.** Independent Contractor, its heirs, assignees, grantees, purchasers for value, and successors in interest, shall indemnify, defend and save harmless the County, its officers, agents and employees, from and against all suits, actions, claims, demands, costs, penalties, fines or liability of any nature whatsoever arising out of, because of, or due to any act or occurrence of omission or commission of Independent Contractor, its heirs, assignees, grantees, purchasers for value, and successors in interest, in the performance of this Agreement.

9. **Effective Date.** This Agreement shall take effect as of the date set forth above.

10. **Termination.** Unless terminated for cause in accordance with applicable law, this Agreement shall terminate on October 1, 2032. Either party may terminate this Agreement for any reason upon ninety (90) days written notice to the other party. Upon termination, Independent Contractor shall, at its sole cost and expense, remove some or all of the Improvements as directed by the County.

11. **Amendments; Assignment.** This Agreement may be amended, and its material provisions may be waived, only by written instrument expressly approved for the County by the Board of County Commissioners and for Independent Contractor by one of its officers and only if properly executed by all the parties hereto.

12. **Validity.** After consultation with their respective legal counsel, the County and Independent Contractor each represents and warrants to the other its respective authority and power under Florida law to enter into this Agreement, acknowledges the validity and enforceability of this Agreement. Independent Contractor and the County each hereby represents, warrants and covenants to and with the other (i) that this Agreement has been validly approved by its respective governing body, and (ii) that this Agreement constitutes a legal, valid and binding contract enforceable against the respective party in accordance with the terms hereof (assuming the due authorization, execution and delivery hereof by the other party hereto).

13. **No General Obligation.** Notwithstanding any other provisions of this Agreement, the obligations undertaken by the parties hereto shall not be construed to be or constitute general obligations, debts or liabilities of the County or the State of Florida or any political subdivision thereof within the meaning of the Constitution and laws of the State of Florida, but shall be payable solely in the manner and to the extent provided in or contemplated by this Agreement.

14. **Force Majeure.** No party shall be liable for any failure to perform, or delay in the performance of, any obligation under this Agreement if such failure is caused directly by hurricane, tornado, fire, earthquake, civil commotion or failure or disruption of utility services, or other like cause beyond the reasonable control of the party obliged to perform.

Bradenton, Florida 34205
Attention: County Attorney
Facsimile: (941)749-3089

If to Independent Contractor:

Raven Crest Homeowners Association, Inc
C/O Home Encounter LLC
12906 Tampa Oaks Blvd., Suite 100
Temple Terrace, FL 33637

And

Robin Parker, P.A.
28059 U.S Hwy 19 North, Suite 301
Clearwater, FL 33761

In all cases, notices shall be deemed delivered to a party only upon delivery of copies to the persons indicated above in the same manner as for the party being notified.

WHEREFORE, the County and Independent Contractor have executed this Agreement as of the date and year first above written.

RAVEN CREST HOMEOWNERS
ASSOCIATION, INC, a FLORIDA NOT-FOR-
PROFIT CORPORATION

ATTEST:

By: _____
[SECRETARY]

By: 
HOA President

MANATEE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
County Administrator