

NON-EXCLUSIVE LICENSE AGREEMENT BY AND BETWEEN THE DEL WEBB OAK CREEK COMMUNITY DEVELOPMENT DISTRICT AND DEL WEBB OAK CREEK HOMEOWNERS ASSOCIATION, INC. REGARDING THE USE OF STORMWATER MANAGEMENT LAKE FOR CATCH AND RELEASE FISHING

THIS LICENSE AGREEMENT ("Agreement") is made and entered into this 3 day of April, 2024, by and between:

DEL WEBB OAK CREEK COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, being situated in Lee County, Florida, and whose mailing address is c/o Special District Services, Inc., The Oaks Center, 2501A Burns Road, Palm Beach Gardens, Florida 33410 ("**District**"); and

DEL WEBB OAK CREEK HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, whose address is c/o Access Management, 1170 Celebration Boulevard, Suite 202, Celebration, Florida 34747 ("**Association**").

RECITALS

WHEREAS, the District is a local unit of special-purpose government established pursuant to and governed by Chapter 190, *Florida Statutes*; and

WHEREAS, the District owns, operates, and/or maintains various stormwater management improvements within the boundaries of the District, including the lake, located in the northern portion of Phase 1, adjacent to the amenity campus, as depicted in **Exhibit A ("Lake")**, attached hereto and incorporated herein by reference; and

WHEREAS, the Licensee has asked the Board of Supervisors of the District for permission to provide for catch and release fishing for residents of the District at the Lake ("**Catch and Release Fishing**"); and

WHEREAS, the District is willing to grant a non-exclusive, revocable license allowing the Licensee to utilize the Lake for the purposes of Catch and Release Fishing, provided that such use does not impede the District's operation of the Lake as a public stormwater management improvement and as further subject to the terms as provided herein.

NOW, THEREFORE, based upon good and valuable consideration and the mutual covenants of the parties, the receipt of which and sufficiency of which is hereby acknowledged, the District and the Licensee agree as follows:

1. INCORPORATION OF RECITALS. The Recitals stated above are true and correct and are incorporated herein as a material part of this Agreement.

2. GRANT OF LICENSE. The District hereby grants to the Licensee a non-exclusive, revocable license to utilize the Lake for the purpose of Catch and Release Fishing ("License").

3. CONDITIONS OF THE LICENSE. The License is subject to the following terms and conditions:

A. The Licensee's use of the Lake shall be for the sole purpose of the Catch and Release Fishing and reasonable ingress and egress thereto.

B. The Licensee acknowledges that the Lake was constructed for the sole purpose of being a drainage and stormwater management utility and there is no expectation of public access to the utility.

C. Wading and swimming in the Lake and other District stormwater management facilities is prohibited.

D. Watercraft of any kind is prohibited in the Lake or other District stormwater management facilities.

E. All users of the Lake and other stormwater management facilities shall not engage in any conduct or omission that violates any ordinance, resolution, law, permit requirement, or regulation of any governmental entity relating to the Lake and other stormwater management facilities.

F. The Licensee's use of the Lake is subject to the rules and policies of the District and the District shall have the right to take such actions as are necessary to preserve the health, safety, and welfare of its residents, landowners, lands, and facilities.

G. The Licensee shall use all due care to protect the property of the District, its residents and landowners from damage, and to require any participants to do the same.

H. The Licensee shall install wildlife warning signage ("Wildlife Warning Signage") in prominent locations around the Lake. The design and placement of the Wildlife Warning Signage must be approved by the District.

I. The District or its duly authorized agents have the right at any and all times to enter and inspect the Lake for compliance with the provisions of this Agreement.

Should the Licensee fail to comply with this section, the District may immediately terminate this Agreement, notwithstanding any provisions to the contrary and shall hold Licensee liable.

4. **EFFECTIVE DATE; TERM.** This Agreement shall become effective on the date first written above and continue through September 30, 2025, unless terminated earlier by either party in accordance with the provisions of this Agreement. The Agreement shall be automatically renewed for additional one (1) year terms, unless written notice is provided by either party thirty (30) days prior to the expiration of the Agreement.

5. **REVOCAION AND TERMINATION.** The District and the Licensee acknowledge and agree that the License granted herein is a mere privilege and may be revoked, in whole or in part, with or without cause, at the sole discretion of the District. In the event the District exercises its right to revoke the License, the District shall provide Licensee written notice of the revocation, which shall be effective immediately upon receipt by Licensee of the notice. Licensee may terminate this Agreement upon written notice to the District.

6. **CONDITION OF THE LAKE.** The District assumes no liability or obligation to Licensee as to the condition of the Lake. The Lake is granted in "as is" condition.

7. **INDEMNIFICATION; LIMITATION ON LIABILITY.** Licensee shall defend, indemnify and hold harmless the District and its supervisors, agents, staff and representatives, from and against any loss, damage, injury, claim, demand, cost and expense (including legal expense) or injury arising from a) Licensee's occupation or use of the Lake, and, b) Licensee's operations, negligence or willful conduct occurring in or on any part of the Lake. The Licensee hereby assumes all risk with respect to its use of the Lake. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the District beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, Florida Statutes or other statute, and nothing in this Agreement shall inure to the benefit of any third party, including but not limited to guests, invitees and licensees, for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law. The provisions of this Paragraph 7 shall survive revocation or termination of this Agreement.

8. **INSURANCE.** Licensee shall maintain and keep in force with an insurance company licensed or authorized to do business in the State of Florida and throughout the entire term of this Agreement, a policy or policies of general comprehensive liability insurance in the amount of \$ ~~2,000,000~~ with a broad form comprehensive general liability endorsement which shall name the District, its supervisors, staff and consultants as additional insured parties and which insurance coverage shall be primary, regardless of whether the District shall maintain other insurance on the Lake. Upon the District's request, Licensee shall furnish the District with written evidence that such insurance coverage is in force and effect.

9. **RECOVERY OF COSTS AND FEES.** In the event the District is required to enforce this Agreement by court proceedings or otherwise, then if successful, the District shall be entitled to recover from the Licensee all fees and costs incurred, including reasonable attorneys' fees and costs.

10. **DEFAULT.** A default by either party under this Agreement shall entitle the other party to all remedies available at law or in equity, which includes, but is not limited to, the rights of damages, injunctive relief, and specific performance.

11. **ASSIGNMENT.** The Licensee may not assign its rights, duties or obligations under this Agreement without the prior written approval of the District. Any purported assignment without said written authorization shall be void.

12. **AMENDMENT.** Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both of the parties hereto.

13. **ENTIRE AGREEMENT.** This instrument shall constitute the final and complete expression of the agreement between the parties relating to the subject matter of this Agreement. Any previous agreements related to the subject matter set forth herein, whether verbal or written, are hereby superseded.

14. **NOTICES.** All notices, requests, consents, and other communications hereunder ("Notices") shall be in writing and shall be delivered, mailed by overnight courier or First-Class Mail, postage prepaid, to the parties as follows:

A. If to the District: Del Webb Oak Creek Community
Development District
c/o Special District Services, Inc.
The Oaks Center, 2501A Burns Road
Palm Beach Gardens, Florida 33410
Attn: District Manager

With a copy to: Kutak Rock LLP
107 West College Avenue
Tallahassee, Florida 32301
Attn: District Counsel

B. If to the Licensee: Del Webb Oak Creek Homeowners
Association, Inc.
c/o Access Management
1170 Celebration Boulevard, Suite 202
Celebration, Florida 34747
Attn: _____

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days.

Counsel for the District and counsel for the Licensee may deliver Notice on behalf of the District and the Licensee. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days' written notice to the parties and addressees set forth herein.

15. CONTROLLING LAW; VENUE. This Agreement and the provisions contained herein shall be construed, interpreted, and controlled according to the laws of the State of Florida. The parties agree that venue for any action arising hereunder shall be in a court of appropriate jurisdiction in Lee County, Florida.

16. PUBLIC RECORDS. Licensee acknowledges and agrees that all documents of any kind relating to this Agreement may be public records and shall be treated as such in accordance with Florida law.

17. ARM'S LENGTH NEGOTIATION. This Agreement has been negotiated fully among the parties as an arm's length transaction. The parties participated fully in the preparation of this Agreement and received, or had the opportunity to receive, the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, the parties are deemed to have drafted, chosen and selected the language and any doubtful language will not be interpreted or construed against any party.

18. THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the parties hereto and no right or cause of action shall accrue upon or by reason of, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended nor shall be construed to confer upon any person or legal entity other than the parties hereto any right, remedy or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants and conditions contained in this Agreement shall inure to the sole benefit of and be binding upon the parties hereto and their respective representatives, successors and assigns.

19. AUTHORIZATION. The execution of this Agreement has been duly authorized by the appropriate body or official of each of the parties hereto, each of the parties has complied with all the requirements of law and each of the parties has full power and authority to comply with the terms and conditions of this Agreement.

20. SEVERABILITY. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

21. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

22. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties execute this Agreement the day and year first written above.

Attest:

**DEL WEBB OAK CREEK COMMUNITY
DEVELOPMENT DISTRICT**

Michelle Kruger
Secretary

[Signature]
Chairperson, Board of Supervisors

Witness

**DEL WEBB OAK CREEK HOMEOWNERS
ASSOCIATION, INC.**

Richard Young
Signature
Richard Young
Print Name of Witness

Kimberly Morton
By: Kimberly Morton
Its: President

Exhibit A: Map of the Lake

Exhibit A
Map of the Lake



