




Interoffice Memorandum

September 5, 2019

TO: Mayor Jerry L. Demings
and the Board of County Commissioners

FROM: Diana M. Almodovar, P.E., Interim Director, Public Works Department 

CONTACT PERSON: Diana M. Almodovar, P.E., Interim Director
Public Works Department

PHONE NUMBER: (407) 836-7974

SUBJ: Agreement by and between Orange County, and Carmel by the Lake Homeowners' Association Inc., for Traffic Law Enforcement on Private Roads – Carmel by the Lake.

Section 316.006, Florida Statutes allows counties to exercise traffic law enforcement over private roads if the owner of the private road enters into a written agreement with the County. Prior to entering into such an agreement, the Sheriff's Office must be consulted. Such agreements cannot go into effect until the beginning of the County's fiscal year, unless the Sheriff waives such requirement in writing.

Carmel by the Lake, LLC has requested such an agreement for the private roads located within the gated community of Carmel by the Lake. The Sheriff's Office has been involved with the negotiation of the contract and has executed a waiver that will allow this agreement to go into effect upon Board approval.

No relationship disclosure form is provided because this is neither a development-related nor a procurement-related item. No specific project expenditure report is provided because this is a ministerial item.

This Agreement has been reviewed by the County Attorney's Office and has been found acceptable.

Action Requested: Approval and execution of Agreement for Traffic Law Enforcement on Private Roads by and between Orange County, Florida and Carmel by the Lake, LLC. District 1.

DMA/mk

BCC Mtg. Date: September 24, 2019

AGREEMENT FOR TRAFFIC LAW ENFORCEMENT ON PRIVATE ROADS

This Agreement for Traffic Law Enforcement on Private Roads (“Agreement”) located within the gated community of **CARMEL BY THE LAKE** is entered into by and between **Orange County, Florida**, a charter county and political subdivision of the State of Florida (hereinafter “County”), and **CARMEL BY THE LAKE, LLC**, a Florida limited liability company (hereinafter “Owner”).

WITNESSETH:

WHEREAS, Owner owns fee simple title to all the private roadways lying within a gated community known as **CARMEL BY THE LAKE** (hereinafter “Private Roads”), more specifically described in **Exhibit “A”**, attached hereto and incorporated by reference; and

WHEREAS, pursuant to Florida law, County does not have traffic law enforcement jurisdiction over Private Roads such as those owned by the Owner; and

WHEREAS, Section 316.006(3)(b), Florida Statutes, provides that a county may exercise jurisdiction over any private road or roads if the county and the party owning such roads enter into a written agreement, approved by the governing board of the county, providing the county with traffic control jurisdiction; and

WHEREAS, Section 316.006(3)(b)(2), Florida Statutes, further provides that prior to entering into an agreement for the enforcement of traffic laws over Private Roads, the governing board of the county shall consult with the Sheriff; and

WHEREAS, the Owner wants the County to enforce the traffic laws upon the Private Roads of said Owner; and

WHEREAS, pursuant to consultations between the Parties and the Orange County Sheriff’s Office (hereinafter “Sheriff”), the County and Sheriff are willing to exercise traffic law enforcement upon the Private Roads; and

WHEREAS, pursuant to Section 30.2905, Florida Statutes, the Sheriff operates an off-duty employment program; and

WHEREAS, Section 316.006(3)(b)(2), Florida Statutes, provides *inter alia* that no such agreement for the enforcement of traffic laws over Private Roads shall take effect prior to October 1 unless such provision is waived in writing by the Sheriff; and

WHEREAS, the Sheriff has waived this provision as evidenced by **Exhibit “B”** attached hereto and incorporated by reference.

Agreement for Traffic Law Enforcement on Private Roads for CARMEL BY THE LAKE

NOW, THEREFORE, in consideration of the covenants and conditions herein, County and the Owner hereby agree as follows:

1. The above recitals are true and correct, and are incorporated herein by reference and form a material part of this Agreement.

2. **Jurisdiction.** County agrees to exercise jurisdiction over enforcement of the traffic laws (including Section 316.2045, Florida Statutes, concerning obstruction of streets, as additionally regulated by the Orange County Block Party Ordinance) upon the Private Roads pursuant to the terms and conditions expressed in Section 316.006(3)(b), Florida Statutes, and subject to the terms and conditions specified in **Exhibit "C"** attached hereto and incorporated by this reference.

3. **Signage.** The Owner shall establish the speed limit for the Private Roads and shall be solely responsible for posting the speed limit by appropriate Department of Transportation ("DOT") approved signage along said roads.

4. **Authority in Addition to Existing Authority.** The County's exercise of traffic law enforcement pursuant to this Agreement shall be in addition to that authority presently exercised by County over the Private Roads and nothing herein shall be construed to limit or remove any such authority.

5. **Compensation.** The Owner shall compensate the Sheriff for the services performed under this Agreement at an hourly rate as otherwise determined by the Sheriff.

6. **County to Retain Revenues.** All revenue from any fines, costs, and penalties imposed by the traffic citations issued for violation of traffic laws on the Private Roads in accordance with this Agreement shall be apportioned in the manner set forth in applicable Florida Statutes.

7. **Liability not Increased.** Neither the existence of this Agreement, nor anything contained herein, shall give rise to any greater liability on the part of the County or the Sheriff than that which the County or the Sheriff would ordinarily be subjected to when providing its normal police services.

8. **Indemnification.** To the fullest extent permitted by law, the Owner shall indemnify, defend, and hold the County and the Orange County Sheriff's Office harmless from any loss, cost, damage or expense, including attorneys' fees, for any action arising out of, related to, or stemming from, either directly or indirectly, the maintenance, repair, construction and/or reconstruction of any roads, road drainage or signage located within the gated community of

Agreement for Traffic Law Enforcement on Private Roads for CARMEL BY THE LAKE

CARMEL BY THE LAKE. To ensure its ability to fulfill its obligation under this paragraph, the Owner shall maintain General Liability insurance in the minimum amount of One Million dollars (\$1,000,000.00), and shall file with the County current certificates of the required insurance providing a thirty (30) day advance written notice of cancellation. Such insurance shall (a) name the County and the Orange County Sheriff's Office as an additional insureds and (b) be issued by a company authorized to do business under the laws of the State of Florida and shall be acceptable to the County. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes.

9. **Road Maintenance.** Neither the existence of this Agreement, nor anything contained herein, shall impose any obligation or duty upon the County to provide maintenance on and/or drainage of the Private Roads. The maintenance, repair and construction or reconstruction of all Private Roads, drainage and signage within the gated community of **CARMEL BY THE LAKE** shall at all times be solely and exclusively the responsibility of the Owner.

10. **Term.** The term of this Agreement shall be for a period of one (1) year, commencing on the date of the execution by the last of the two Parties signing hereto, and shall thereafter automatically continue for successive one (1) year terms unless otherwise terminated by any party by thirty (30) days written notice to the other Parties. The provisions of Paragraph 8 herein shall survive the termination of this Agreement.

11. **Entire Agreement.** This Agreement, including all exhibits attached hereto, constitutes the entire understanding and agreement between the Parties and may not be changed, altered, or otherwise modified except when reduced to writing and executed in the same manner with approval by the Orange County Board of County Commissioners.

12. **Notice.** Any notice required or permitted hereunder shall be delivered by hand delivery, express courier, or certified mail, return receipt requested, and shall be effective upon receipt of the same. Notice shall be delivered to each of the Parties at the following addresses or at such other addresses as specified by written notice in compliance with the terms of this paragraph.

As to County:

Orange County Administrator
201 South Rosalind Avenue, 5th Floor
Orlando, Florida 32801

Copy to:

Orange County Attorney's Office
201 S. Rosalind Avenue, 3rd Floor
Orlando, Florida 32801

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As to Sheriff: Orange County Sheriff's Office
P.O. Box 1440
Orlando, Florida 32802-1440

As to Owner: Carmel by the lake, LLC
Attn: Legal Department
7940 Via Dellagio Way, Suite 200
Orlando, Florida 32819

13. **Severability.** If any sentence, phrase, paragraph, provision or portion of this Agreement is held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be considered an independent provision and the finding shall have no effect on the validity of the balance of this Agreement.

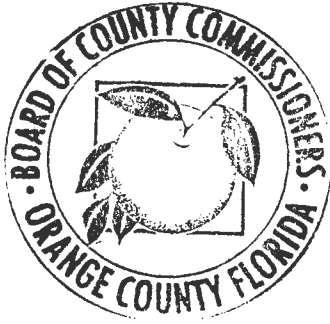
14. **Assignment.** It is acknowledged and understood that Owner anticipates assigning ownership of the Private Roads, as more specifically described in **Exhibit "A"** herein, to a homeowner's association at a future date. At such time, Owner shall also assign this Agreement and shall notify the Orange County Sheriff's Office of such assignment. The homeowner's association shall thereafter assume the duties and responsibilities provided for herein.

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[SIGNATURES ON FOLLOWING PAGES]

Agreement for Traffic Law Enforcement on Private Roads for CARMEL BY THE LAKE

IN WITNESS WHEREOF, the Parties have executed this Agreement for Traffic Law Enforcement on Private Roads for the community of **CARMEL BY THE LAKE** on the dates indicated below.



ORANGE COUNTY, FLORIDA

By: Orange County Board of County Commissioners

By: *Jerry L. Demings*
Jerry L. Demings
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Kneest*
Deputy Clerk

Date: SEP 24 2019

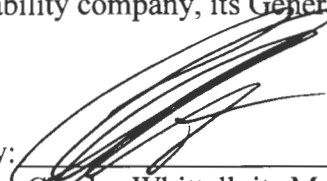
[Remaining Signatures on Following Page]

Agreement for Traffic Law Enforcement on Private Roads for CARMEL BY THE LAKE

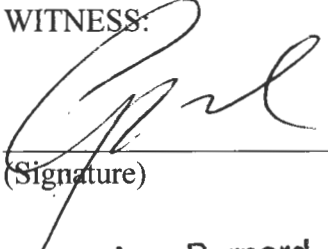
CARMEL BY THE LAKE, LLC, a Florida limited liability company

By: CW Family, LLLP, a Florida limited liability limited partnership, its Manager

By: CW Family, LLC, a Florida limited liability company, its General Partner

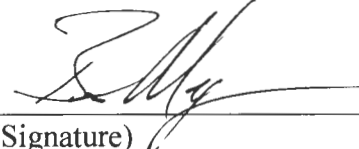
By: 

Charles Whittall, its Manager

WITNESS:


(Signature)
Amy Barnard

(Print Name)



(Signature)
Brett Mulligan

(Print Name)

Agreement for Traffic Law Enforcement on Private Roads for CARMEL BY THE LAKE

EXHIBIT "A"

LEGAL DESCRIPTION

A PORTION OF GOVERNMENT LOTS 1 AND 4, LYING IN SECTION 28, TOWNSHIP 23 SOUTH, RANGE 28 EAST IN ORANGE COUNTY, FLORIDA, ALSO BEING THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 10442, PAGE 8062, OFFICIAL RECORDS BOOK 10289, PAGE 5868, OFFICIAL RECORDS BOOK 8668, PAGE 2999 AND OFFICIAL RECORDS BOOK 10289, PAGE 5866 OF THE PUBLIC RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF LOT 10, POINT TIBET REPLAT, ACCORDING TO PLAT THEREOF AS RECORDED IN PLAT BOOK 29, PAGES 147 THROUGH 149 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE SOUTH 00°45'03" WEST ALONG THE WESTERLY PLATTED LINE OF SAID POINT TIBET REPLAT, FOR A DISTANCE OF 421.59 FEET; THENCE SOUTH 01°15'05" EAST, ALONG SAID PLATTED LINE, A DISTANCE OF 343.70 FEET TO THE SOUTHWEST CORNER OF SAID POINT TIBET REPLAT; THENCE CONTINUE SOUTH 01°15'05" EAST, A DISTANCE OF 113.63' FEET TO THE CENTERLINE OF A CANAL; THENCE SOUTH 11°30'37" EAST, ALONG SAID CENTERLINE, A DISTANCE OF 80.64 FEET; THENCE DEPARTING SAID CENTERLINE, RUN SOUTH 84°24'17" WEST, A DISTANCE OF 25.91 FEET; THENCE SOUTH 62°07'18" WEST, A DISTANCE OF 69.92 FEET; THENCE NORTH 89°50'19" WEST, A DISTANCE OF 55.11 FEET; THENCE SOUTH 76°31'12" WEST, A DISTANCE OF 34.95 FEET TO A POINT ON THE WEST LINE OF SAID GOVERNMENT LOT 1; THENCE SOUTH 00°45'03" WEST, ALONG SAID WEST LINE OF GOVERNMENT LOT 1, A DISTANCE OF 4.0 FEET, MORE OR LESS, TO THE EDGE OF WATER OF LAKE TIBET BUTLER; THENCE WESTERLY AND NORTHERLY ALONG THE EDGE OF WATER OF LAKE TIBET BUTLER, A DISTANCE OF 2180 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF LOT 1 OF SAID POINT TIBET REPLAT; THENCE SOUTH 85°54'53" EAST, ALONG SAID LOT LINE, A DISTANCE OF 8.8 FEET, MORE OR LESS, TO AN EXISTING 1/2" IRON PIN (NO ID); THENCE CONTINUE ALONG THE BOUNDARY LINE OF SAID POINT TIBET REPLAT THE FOLLOWING THREE (3) COURSES AND DISTANCES: (1) SOUTH 88°54'53" EAST, 315.46 FEET; (2) SOUTH 44°14'57" EAST, 202.23 FEET; (3) SOUTH 00°45'03" EAST, 402.41 FEET TO THE **POINT OF BEGINNING.**

PARCEL CONTAINS IN TOTAL: 16.6 ACRES, MORE OR LESS.

Agreement for Traffic Law Enforcement on Private Roads for CARMEL BY THE LAKE

EXHIBIT "B"



Sheriff John W. Mina

ORANGE COUNTY SHERIFF'S OFFICE

INTEROFFICE MEMORANDUM

April 5, 2019

TO: Mayor Jerry L. Demings
Board of County Commissioners

FROM: Sheriff John W. Mina *JWM*

SUBJECT: Carmel by the Lake Gated Community

I understand Orange County will enter into an agreement with Carmel by the Lake, LLC for the Carmel by the Lake gated community for traffic control and enforcement pursuant to Florida Statute 316.006(3)(b). The agreement will allow the Carmel by the Lake Homeowner's Association, Inc. to employ deputies through this agency's off-duty employment program to enforce traffic laws within the subdivision.

As you know, Section 316.006(3)(b), F.S., reads in part: "No such agreement shall take effect prior to October 1st, the beginning of the county fiscal year, unless this requirement is waived in writing by the Sheriff." Please be informed I hereby waive the October 1st requirement.

If you have any questions, please do not hesitate to contact me. Thank you for your assistance in this matter.

JWM/km
Attachment

cc: OCSO Off-Duty Services
OCSO Legal Traffic Agreement Files

Agreement for Traffic Law Enforcement on Private Roads for CARMEL BY THE LAKE

EXHIBIT "C"

Owner shall obtain traffic law enforcement by means of employing deputies through the Sheriff's off-duty program.

Residents of **CARMEL BY THE LAKE** wishing to make a traffic complaint, or to request a traffic law enforcement detail, shall contact the Owner. Residents contacting the Sheriff's Office directly with such complaints or requests shall be directed to the Owner for further action.