



Interoffice Memorandum

December 7, 2017

TO: Mayor Teresa Jacobs  
and Board of County Commissioners

FROM: Mark V. Massaro, P. E., Director, Public Works Department

CONTACT PERSON: Christine N. Lofye, P.E., Manager  
Traffic Engineering Division

PHONE NUMBER: (407) 836-7894

SUBJ: Heather Glen Homeowner's Association, Inc., Agreement for Traffic  
Control Devices

Submitted for approval and execution is an agreement by Heather Glen Homeowners Association, Inc., (the Association) in favor of Orange County. This Hold Harmless Agreement was initiated by the Association.

The Association will install decorative street name and traffic control signposts in lieu of the standard street name and traffic control signposts that would normally be provided by the County. The Association is capable of assuming the responsibility, liability, and maintenance of the decorative street name and traffic control signposts as defined in the agreement.

Staff recommends approval and execution of the agreement between the Association and Orange County to maintain decorative street name and traffic control signposts. This agreement has been approved as to form by the County Attorney's Office and the Risk Management Division.

**Action Requested: Approval and execution of Homeowner's Association Agreement for Heather Glen at Sweetwater Country Club Subdivision Traffic Control Devices by and between Heather Glen Homeowners Association, Inc. and Orange County, Florida that provides for the Association to maintain decorative street name and traffic control signposts. District 2.**

MVM/CL/nad

Attachments

BCC Mtg. Date: January 9, 2018

**THIS INSTRUMENT PREPARED BY:**

Traffic Engineering Division  
4200 South John Young Parkway  
3<sup>rd</sup> Floor  
Orlando, FL 32839-9205

**HOMEOWNER'S ASSOCIATION AGREEMENT  
FOR  
HEATHER GLEN at SWEETWATER COUNTRY CLUB  
SUBDIVISION  
TRAFFIC CONTROL DEVICES**

This Agreement (the "Agreement") is entered into by and between **HEATHER GLEN HOMEOWNERS ASSOCIATION, INC.**, a Florida not-for-profit corporation (hereinafter the "Association"), and **ORANGE COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter the "County").

**Recitals**

**WHEREAS**, the Association is the duly created property owner's association for the Heather Glen at Sweetwater Country Club subdivision, which is in Orange County, Florida, and described as follows (the "Property"): see **Exhibit "A"** which is attached hereto and made a part hereof; and

**WHEREAS**, the Association desires to install and maintain the following improvements: decorative street name and traffic control signposts in lieu of the standard street name and traffic control signposts which would normally be provided by the County (hereinafter the "Improvement(s)") which improvements will encroach only on certain public rights of way as shown on the Plat identified on **Exhibit "A"**; and

**WHEREAS**, the Association freely desires to and is capable of assuming the responsibility and liability for installing and maintaining the Improvements;

**NOW, THEREFORE**, in consideration of the foregoing and of the terms and conditions set forth herein, the parties agree as follows:

1. **RECITALS**. The foregoing recitals are true and form a material part of this Agreement.
2. **APPLICATION OF THE RIGHT OF WAY UTILIZATION REGULATIONS**. Except as specifically modified by this Agreement, the Association shall comply with the Orange County Right of Way Utilization Regulations, Orange County Code Chapter 21, Article VI, regarding the permitting, installation, and maintenance of the Improvements.

3. **PLACEMENT OF IMPROVEMENTS, REPLACEMENT AND TEMPORARY SIGNAGE.**

**A. Subdivision-wide applicability.** Any subdivision that elects to install customized sign posts shall use the customized sign posts for all Improvements.

**B. Breakaway capability.** The placement of the Improvements will be in accordance with national standards set forth by the Federal Highway Administration in the Manual on Uniform Traffic Control Devices ("MUTCD") and capable of breakaway upon impact by a vehicle. Under no circumstances shall the Association install customized sign posts in a concrete foundation, and the Association agrees and covenants that all customized sign posts shall be breakaway. Breakaway capability certification has been supplied on behalf of the Association and is attached as **Exhibit "B."**

**C. Replacement of signs at the end of life cycle.** The County's replacement cycle for sign panels is at least once every ten (10) years from the date of sign installation for a subdivision or a particular phase of a subdivision, as applicable. Therefore, upon or around the time of the end of the first replacement cycle after the effective date of this Agreement, the County will notify the Association that replacement sign panels must be installed. Upon receipt of this notice from the County, the HOA shall secure a private sign contractor within ten (10) calendar days. If Orange County Public Works is fabricating the signs, the contractor then has ten (10) calendar days to pick up the sign panels from Public Works, and ten (10) calendar days from pick-up to complete installation of the sign panels on the customized sign posts. In order for Public Works to fabricate replacement signs pursuant to the County's fee schedule, the Association must have paid the County for sign fabrication at one point in time, either initially or upon replacement.

**D. Temporary signage.** If the Association requests, and the County approves, a new sign or signs for the subdivision, or if the County deems necessary any changes to the subdivision signage, the County will install temporary signs. If changes to the signage were deemed necessary by the County, the County shall notify the Association, in writing, of the changes that must be made to the subdivision's permanent signage system. In either case, the Association shall install the new sign panels in customized sign posts within ten (10) days of the County's installation of the temporary signs, and shall return the temporary signs to the County.

4. **RESPONSIBILITIES.** The County shall not be required or obligated in any way to construct or maintain, or participate in any way in the construction or maintenance of the Improvements. The Improvements shall not be dedicated to the use and enjoyment of the general public, but shall be dedicated to the common use and enjoyment of the Association, and the owners of the Property. It is the intent of the parties that the Association, its grantees, successors or assigns in interest, or some other association

and/or assigns satisfactory to the County, shall be responsible for the permitting, installation and maintenance of the Improvements (and removal and re-installation, as may be necessary), and all the costs and expenses thereof. In the event the Association fails to maintain the Improvements, the County shall have the authority to terminate this Agreement, remove the Improvements, and install standard traffic control devices in their place. In such an event, the Association shall be obligated to reimburse the County for the costs and expenses the County incurred in removing the Improvements and installing standard traffic control devices in their place. Accordingly, the Association's obligation to reimburse the County for the costs and expenses the County incurs related to this Agreement shall survive termination of this Agreement.

5. **PROTECTIVE COVENANTS.** The parties acknowledge that the Property is subject to recorded protective covenants, conditions and restrictions (hereinafter the "Protective Covenants") satisfactory to the County for the permitting, installation, and maintenance of the Improvements by the Association. The Protective Covenants provide a method for the Association to assess the owners of the Property for the cost of permitting, installing, and maintaining (and removing and reinstalling, as may be necessary) the Improvements. Moreover, the Protective Covenants provide that the Association can impose liens against those parcels of property for which payment of any assessment is not made. The Association agrees that the Protective Covenants shall remain in full force and effect at all times.

6. **NON-FUNCTIONING IMPROVEMENT.** A non-functioning Improvement is defined as follows:

- Stop or yield signs are considered non-functioning when the sign is missing, knocked down, or if the sign blade is damaged.
- Signs other than stop or yield signs are considered non-functioning when the sign is missing or if the sign blade is damaged. If a sign in this category has been knocked down, it is the responsibility of the Association to re-install the sign.

Upon notification of the County, from any source, that an Improvement (a traffic control device) is non-functioning, the County shall diligently strive to place a temporary replacement traffic control device and inform the Association of the particular Improvement's non-functioning status, as follows: within two (2) hours for non-functioning stop or yield signs; within three (3) days for all other non-functioning Improvements. The Association shall repair or replace the particular Improvement(s) within ten (10) days of notification from the County and shall return the temporary traffic control device to the County. This section is not intended to and does not in any way shift or remove the hold harmless and indemnification obligations given by the Association to the County through this Agreement.

7. **INDEMNIFICATION AND HOLD HARMLESS.** The Association shall defend, indemnify and hold harmless the County its agents, officials and employees from and against all losses, damages, costs, claims, suits, judgements, liabilities, expenses and attorney's fees (including those for legal services rendered at the Appellate Court level)

resulting from or relating to the use, construction, maintenance or replacement of the Improvement(s). The Association shall record this Agreement, which shall operate to declare that Orange County is a third-party beneficiary of the Association's maintenance obligations, and that Orange County has the legal right to enforce said maintenance and indemnification obligations against the Association in a court of competent jurisdiction.

8. **INSURANCE.** Prior to commencing construction of any portion of the Improvements and throughout the course of construction, maintenance or replacement of the Improvements, the Association, and any of its agents or contractors installing, constructing, maintaining or replacing the Improvements, shall procure and maintain insurance with such limits and terms as specified below:

A. Workers' compensation insurance with statutory workers' compensation limits and no less than \$500,000 (Five-Hundred Thousand Dollars) for Employer's Liability with a waiver of subrogation in favor of the County its employees and officials.

B. Commercial general liability insurance for all operations including, but not limited to contractual, products and completed operations and personal injury with limits of not less than \$1,000,000 (One Million Dollars) per occurrence and an aggregate limit of at least twice the per occurrence limit.

C. Business automobile liability insurance for all owned, hired, or non-owned vehicles with limits of \$500,000 (Five-Hundred Thousand Dollars) per occurrence.

The Association shall be responsible for ensuring that each of its contractors and subcontractors of every tier procure and maintain the insurance specified above and shall furnish to the County evidence of such insurance prior to commencement of construction. The County shall be specifically named (scheduled) as an additional insured on all policies except for workers' compensation coverage.

All coverage shall be primary and not contributory with any insurance or self-insurance maintained by the County. The Owner shall provide the County notice of any material change, cancellation, non-renewal of any policy required herein at least thirty (30) days prior to the occurrence thereof.

9. **COVENANTS RUNNING WITH THE LAND.** It is intended that the provisions of this Agreement shall constitute covenants running with the land or an equitable servitude upon the lands owned by the Association, applicable to all of the Common Areas and to all easements granted in favor of the Association as shown on the Plat on the Property described herein, or granted to the Association by any governing document applicable to it, or granted to the Association by any member of the Association, or any portion thereof of the foregoing. It is further intended that this Agreement shall be binding on the parties to this Agreement and their successors and assigns. This Agreement shall inure to the benefit of and be enforceable by the County, its respective legal representatives, successors, and assigns.

10. **AMENDMENT.** The provisions, restrictions and covenants of this Agreement and this Agreement itself shall not be modified or amended without the prior written consent of the Orange County Board of County Commissioners.
11. **TERM AND TERMINATION.**
- A. The initial term of the Agreement shall be ten (10) years from the effective date. Thereafter the Agreement shall automatically renew for successive ten (10) year terms unless terminated by any party pursuant to the provisions below.
- B. This Agreement may be terminated by the County upon thirty (30) days prior written notice to the Association. This Agreement may be terminated by the Association upon forty-five (45) days written notice to the County c/o Orange County Traffic Engineer, 4200 South John Young Parkway, Orlando, Florida 32839-9205. Upon termination of this Agreement, the Improvement(s) shall be removed at the Association's cost and expense and replaced at the Association's cost and expense with standard street and traffic signposts by the County.
12. **RECORDING.** This Agreement shall be recorded at the Association's expense in the Public Records of Orange County, Florida. This Agreement and the obligations created herein shall run with the Property and shall be enforceable against the parties, the grantees of any or all of the Property, or their successors and assigns in interest.
13. **EFFECTIVE DATE.** This Agreement shall become effective upon the date of execution by the County or upon the date of execution by the Association, whichever occurs later.

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**Homeowner's Association Agreement for Heather Glen Subdivision Traffic Control Devices**

**ORANGE COUNTY FLORIDA**

By: Board of County Commissioners

By: *Teresa Jacobs*  
Teresa Jacobs  
Orange County Mayor

Date: 1.9.18

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

By: *Katie Smith*  
Deputy Clerk

Date: JAN 09 2018



**Homeowner's Association Agreement for Heather Glen Subdivision Traffic Control Devices**

**HOMEOWNERS ASSOCIATION, INC.**

By: [Signature]  
Print Name: Mark A. Mantre  
Title: President  
Date: 8/3/17

**WITNESSES:**

[Signature]  
Signature

Maria Santana  
Print Name

[Signature]  
Signature

Elizabeth Cabán  
Print Name

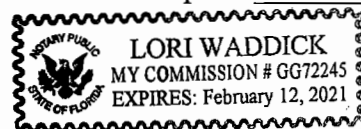
STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 3 day of August, 2017, by Mark Mantre, as President of Sweetwater CC HOA, a Florida Not-For Profit Corp., on behalf of said corporation. He / she is personally known to me.

By: [Signature]  
Print Name: Lori Waddick

Notary Public Commission Stamp

My Commission Expires: \_\_\_\_\_





**Exhibit "A"**

### Property Description

**Exhibit "A"**

**Property Description**

Heather Glen – Plat Book 34, Pages 29 through 31.

All in the Public Records of Orange County, Florida

# *Creative* **SIGNS**

COMPLETE SIGN SERVICE SINCE 1981

TO WHOM IT MAY CONCERN,

Creative Signs Inc. was requested to make a site inspection of the decorative poles at the Heather Glen Subdivision inside Sweet Water Country Club in Apopka, FL. Upon making the site inspection, we found the posts have a breakaway system. Please see photos below.



Sincerely,

A handwritten signature in black ink, appearing to read 'Matt DiSalvatore'.

Matt DiSalvatore

VP

Creative Signs Inc.

2301 N. Hiawasse Rd. Apopka, FL

407-293-9393 x-106