

RETURN TO:
Donna Carlen
Town Clerk
Town of Belleair
901 Ponce de Leon Boulevard
Belleair, FL 33756

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (the "Agreement") is entered into effective as of the ____ day of _____, 20____, by _____, whose address is _____ (the "Property Owner") in favor of the Town of Belleair, a Florida municipal corporation, (the "Town"), whose address is 901 Ponce de Leon, Belleair, Florida, 33756.

RECITALS

- A. The Property Owner owns certain real property in the Town of Belleair more particularly described as (actual address) _____ (parcel number) _____.
- B. A concrete public sidewalk, dedicated as a public right-of-way and maintained by the Town, abuts the Property.
- C. The Town is generally required to maintain areas dedicated to the Town as right-of-way.
- D. The Property Owner has installed or intends to install a decorative driveway and driveway apron for aesthetic purposes that encroaches the Town's right-of-way (such encroachment shall be referred to as the "Sidewalk Area").
- E. The Town is generally concerned about the health, welfare and safety of its citizenry.
- F. While the Town does not permit a Property Owner to install foreign decorative materials within the Sidewalk Area, the Town shall permit the Property Owner to install or leave the foreign decorative materials in the Sidewalk Area provided that the Property Owner enters into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.
2. **Installation.** The Town generally does not permit a property owner to install foreign decorative materials in the Town's Sidewalk Area and the concrete sidewalk right-of-way that is dedicated to the Town. The Town shall permit the Property Owner to install or leave the foreign decorative materials in the Sidewalk Area provided the Property Owner enters into and complies with this agreement and complies with any additional requirements and conditions the Town may have for the installation of these decorative materials.
3. **Indemnification.** The Property Owner, and his or her heirs, successors or assigns, hereby agree jointly and severally, unconditionally, and irrevocably to indemnify, defend and hold harmless the Town from any loss, liability, cost, personal injury, expense or damage of any and every kind whatsoever (including without limitation, court costs and attorneys' fees and expenses) which at any time or from time to time may be suffered or incurred by any party in connection with the Property Owner's installation of decorative materials within the Sidewalk Area. Nothing contained herein shall be construed as a waiver of any immunity or levitation of liability that the Town may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

4. **Acknowledgment.** The Property Owner acknowledges that the Sidewalk Area is a part of a publically dedicated right-of-way, and that the Property Owner has installed decorative materials in the Sidewalk Area at his or her own risk.

5. **Maintenance and Repair.**

a. The Town shall repair or maintain the public dedicated right-of-way concrete sidewalks exclusive of the Sidewalk Area, with materials the Town deems appropriate in the Town's sole discretion. If the Town, for any reason, shall be required to repair or remove any portion of the Sidewalk Area, the Town shall not be obligated to return the Sidewalk Area to its original condition and shall not be obligated to replace the Sidewalk Area with any decorative materials. Notwithstanding the foregoing and except as provided below the Property Owner shall have the option of repairing or replacing the Sidewalk Area with foreign or decorative materials, at the Property Owner's own cost and using the Property Owner's own agents, contractors, or material men ("Replacement Option"). If the Town needs to maintain, repair or remove the Sidewalk Area, the Town, as a courtesy, shall provide the Property Owner at least five (5) days written notice of such maintenance or repair ("Notice"). This notice requirement shall not apply in the event of any emergency maintenance or repair and, in all cases, the Town shall have no liability for the failure to provide this Notice. If the Property Owner selects the Replacement Option, the Property Owner must notify the Town in writing by certified mail of his or her desire for this option within five (5) days of the Town's Notice of maintenance, repair or removal. The Property Owner acknowledges that the Property Owner shall comply with any and all of the Town's requirements and conditions for the Property Owner's replacement of the Sidewalk Area. The Property Owner's failure to satisfy any of the Town's requirements and conditions shall be a breach of this Agreement. If the Property Owner does not replace or repair the Sidewalk Area within the time frame set forth by the Town, the Town shall repair the Sidewalk Area using materials the Town deems appropriate in the Town's sole discretion. If the Property Owner selects the Replacement Option and completes the replacement or repair, the Town shall reimburse the Property Owner an amount equal to the Town's estimate of the cost to the Town for such replacement or repair of the Sidewalk Area using the materials the Town deems appropriate. The Town's estimate of such costs shall be final and binding on all parties.

Moreover, if the Property Owner selects Replacement Option, the Property Owner, and his or her heirs, successors or assigns, hereby agree jointly and severally, unconditionally, and irrevocably to indemnify, defend and hold harmless the Town from any loss, liability, cost, personal injury, expense or damage of any and every kind whatsoever (including without limitation, court costs and attorneys' fees and expenses) which at any time or from time to time may be suffered or incurred by any party in connection with the Property owner's installation of decorative materials within the Sidewalk Area. Nothing contained herein shall be construed as a waiver of any immunity or levitation of liability that the Town may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

b. Notwithstanding Section 74-516 of the Town Code, the Property Owner shall be responsible for the maintenance and repair of the Sidewalk Area. If the Property Owner fails to maintain the Sidewalk Area in a manner acceptable to the Town, in the Town's sole discretion, the Town shall remove the decorative materials from the Sidewalk Area and replace it with a standard concrete sidewalk. If the Town replaces the decorative materials in the Sidewalk Area with a standard concrete sidewalk because of the Property Owner's failure to maintain the Sidewalk Area in a manner acceptable to the Town, in the Town's sole discretion, the Replacement Option described in 5(a) above shall not be available to the Property Owner.

6. **Recording.** This Agreement shall be recorded in the public records in Pinellas County in order to put future heirs, successors, purchasers and assigns of this Property on notice of this Agreement. This Agreement is binding upon all future heirs, successors, purchasers and assigns of Property and shall run with the land. The Property Owner shall bear the cost of recording this Agreement.

7. **Attorney's Fees.** In the event of any litigation arising out of or connected in any manner with this Agreement, the non-prevailing party shall pay the costs of the prevailing party, including its reasonable attorney and paralegal fees and expenses incurred in connection therewith through and including the costs of any appeals and appellate costs relating there to.

8. **Severability.** In case any one or more provisions contained in this Indemnity shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

9. **Entire Agreement.** This Agreement contains the entire understanding among the parties and supercedes any prior written or oral agreement between them respecting the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings, verbally or written, between the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

WITNESSES:

Signature of Witness #1

Property Owner #1

Print/Type Name of Witness #1

Signature of Witness #2

Print/Type Name of Witness #2

STATE OF FLORIDA

COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this ___ day of _____, 2008, by _____ Property Owner, who is personally known to me or has produced _____ (type of identification) as identification.

Signature of Person Taking Acknowledgment

Name of Acknowledger Typed, Printed or Stamped

(NOTARY SEAL)

Notary Public, State of Florida

Notarial Serial Number

Signature of Witness #1

Property Owner #2

Print/Type Name of Witness #1

Signature of Witness #2

Print/Type Name of Witness #2

STATE OF FLORIDA

COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____ and _____, Property Owner, who is personally known to me or has produced _____ (type of identification) as identification.

Signature of Person Taking Acknowledgment

Name of Acknowledger Typed, Printed or Stamped

(NOTARY SEAL)

Notary Public, State of Florida

Notarial Serial Number

TOWN OF BELLEAIR,
a Florida municipal corporation

Micah Maxwell
Town Manager

ATTEST:
Donna Carlen,
Town Clerk

