



This instrument prepared be and should be returned to:  
Virginia Cassady, Esquire  
P.O.Box 4848  
Sanford, Florida 32772-4848

INSTR 20050557718  
OR BK 08142 PG 2561 PGS=6  
MARTHA O. HAYNIE, COMPTROLLER  
ORANGE COUNTY, FL  
08/19/2005 08:42:09 AM  
REC FEE 52.50

**RIGHT-OF-WAY UTILIZATION PERMIT AND AGREEMENT**

THIS PERMIT is issued by the City of Edgewood, and this Agreement is entered into this 4th day of August, 2005 by and between BEAZER HOMES CORPORATION, a Tennessee corporation ("DEVELOPER") and the CITY OF EDGEWOOD, FLORIDA, a political subdivision of the State of Florida (the "CITY").

**RECITALS:**

**WHEREAS**, residential community known as The Legacy is being developed on certain real property in the City of Edgewood, Orange County, Florida (the "Property"), as more particularly described in Exhibit "A."

**WHEREAS**, a Homeowners' Association is to be formed to, among other things, assure the perpetual and continuous maintenance of certain common property and entrance way areas located on and adjacent to the Property; and

**WHEREAS**, DEVELOPER on behalf of the Homeowners' Association, desires to receive right-of-way utilization permits from the CITY whereby DEVELOPER shall be allowed to install, construct, maintain, and restore landscaping, sod, and sprinkler systems (the "Improvements") in, under, through and upon the rights-of-way along Holden Avenue and Jessamine Lane between the Property and those respective streets; and

**WHEREAS**, Sections 11-16 and 11-17 of the Edgewood City Code requires that all property owners reasonably maintain and effectively control and eliminate excessive growth, trash, and accumulations on the portion of the adjoining public right-of-way between owners' properties and the street, and the Homeowners' Association shall undertake that responsibility on behalf of individual property owners within the residential community; and

**WHEREAS**, the Homeowners' Association hereby undertakes certain commitments and covenants to assure the perpetual and continuous maintenance of any such Improvements in the rights-of-way; and

**NOW THEREFORE**, for and in consideration of the premises, the payment of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy which are hereby expressly acknowledged, the parties agree as follows:

1. **RECITALS.** The foregoing recitals are true and correct and are incorporated herein by this reference.

**2. GRANTING OF PERMIT TO UTILIZE RIGHT-OF-WAY FOR INSTALLATION AND CONSTRUCTION.** The CITY hereby gives to DEVELOPER for the benefit of the Property a non-exclusive revocable at will permit to install, and construct landscaping, sod, and sprinkler systems (the "Improvements") in, under, through and upon the rights-of-way along Holden Avenue and Jessamine Lane between the Property and those respective streets in accordance with the terms of this Permit and Agreement. Nothing contained herein shall give or grant DEVELOPER or the Homeowners' Association any ownership or lease rights to any portion of the CITY's right-of-way, and the CITY may revoke said permit at its sole discretion at any time. **This Permit for construction and installation shall terminate and expire one (1) year from the date of approval by the CITY unless revoked earlier. It may be extended in yearly increments at the discretion of the City Engineer or designee upon filing with the City Engineer an approved Certificate of Insurance.**

**3. GRANTING OF PERMIT TO UTILIZE RIGHT-OF-WAY FOR MAINTENANCE.** The CITY hereby gives the DEVELOPER for the benefit of the Property a non-exclusive revocable at-will permit to maintain landscaping, sod, and sprinkler systems (the "Improvements") in, under, through, and upon the rights-of-way along Holden Avenue and Jessamine Lane between the Property and those respective streets in accordance with the terms of this Permit and Agreement. Pursuant to Sections 11-16 and 11-17 of the Edgewood City Code, the DEVELOPER and Homeowners' Association shall keep said rights-of-way free from any trash and refuse. Nothing contained herein shall give or grant the DEVELOPER or the Homeowners' Association any ownership or lease rights to any portion of the CITY's right-of-way, and the CITY may revoke said Permit at its sole discretion at any time.

**4. OBLIGATIONS OF DEVELOPER AND HOMEOWNERS' ASSOCIATION.**

- a. DEVELOPER or the Homeowners' Association shall install or construct the Improvements under paragraph 2 above between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday.
- b. DEVELOPER and the Homeowners' Association shall keep and maintain the Improvements in good order and repair as determined by the City Engineer. Should DEVELOPER and the Homeowners' Association fail to reasonably and properly maintain the Improvements, the CITY, its employees and agents, shall have the right to remove all Improvements or maintain and repair the Improvements, all at the DEVELOPER's or the Homeowners' Association's expense. If the DEVELOPER or the Homeowner's Association fails to reimburse the CITY for the costs and expenses incurred by the CITY in performing such work within fifteen (15) days after receipt of written demand therefore, the CITY shall have a lien on the Property/Homeowners' Association for the amount of said costs and expenses and shall have the right to terminate this Agreement.

**5. DISTURBANCE/DAMAGE.** The DEVELOPER or the Homeowners' Association shall not, while installing or maintaining the Improvements, damage or disturb any portion of the CITY's Right-of-way, including adjacent roadways, without the prior written approval of the CITY or, where applicable, County. The Improvements must be approved by the CITY and shall be established and maintained in such a manner as will not interfere with the use of the rights-of-way by the public, nor create a safety hazard on such rights-of-way. If the CITY determines that the Improvements do present a safety hazard, then the DEVELOPER or Homeowners' Association, at its sole expense shall relocate or remove the Improvements in such a manner so as to eliminate the hazards to the satisfaction of the CITY.

**6. REMOVAL/LOCATION.** If, in the opinion of the CITY, the Improvements interfere with any construction, reconstruction, alteration or improvements, which the CITY desires to perform on, around or under the rights-of-way, the DEVELOPER or Homeowners' Association, upon request of written notice from the CITY, shall remove or relocate the Improvements as requested by the CITY within thirty (30) days of receipt of said notice.

**7. INDEMNIFICATION AND HOLD HARMLESS.** To the fullest extent permitted by law, DEVELOPER and Homeowners' Association shall indemnify, hold harmless and defend the CITY, its agents, and employees, or any of them, from and against all claims, damages, losses, and expenses including, but not limited to, attorneys' fees and other legal costs such as those for investigative and legal support services, and the actual cost incurred for expert witness testimony, arising out or resulting from this Permit and Agreement, provided that same is caused in whole or part by the error, omission, negligent acts, conduct, or misconduct of DEVELOPER and Homeowners' Association, its agents, servants, employees, or subcontractors. Adequate consideration has been provided by the City for this obligation, the receipt and sufficiency of which is hereby specifically acknowledged. Nothing herein shall be deemed to affect the rights, privileges, and immunities of the CITY as set forth in Section 768.28, *Florida Statutes*. In claims against any person or entity indemnified under this section by an employee of DEVELOPER or Homeowners' Association or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this section shall not be limited by a limitation on amount or types of damages, compensation or benefits payable by or for DEVELOPER or Homeowners' Association or its agents or subcontractors, under Workers' Compensation acts, disability benefits acts, or other employee benefit acts.

**8. INSURANCE.** Throughout the duration of this Agreement, including the initial period and any extensions thereto, the DEVELOPER or Homeowners' Association shall obtain and possess commercial general liability coverage for all operations under this Agreement, including but not limited to contractual and personal injury. The limits shall not be less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit or its equivalent. Prior to commencing operations under this Agreement, the DEVELOPER or Homeowners' Association shall provide certificates of insurance to the

CITY to verify coverage. The name of the Property and the type and amount of coverage provided, shall be clearly stated on the face of the certificate of insurance. The insurance coverage shall name the CITY as an additional insured, and shall contain a provision which forbids any cancellation, changes or material alterations, or renewal of coverage without providing thirty (30) days prior written notice to the CITY.

9. **RECORDING.** It is intended that this Permit and Agreement will be recorded in Public Records of Orange County, Florida. Upon execution of this Permit and Agreement, the DEVELOPER agrees to pay the CITY an amount equal to the applicable cost of recording this Permit and Agreement in the Public Records of Orange County, Florida.

10. **PERMIT FEES; ADDITIONAL ENGINEER, PLANNING, AND LEGAL FEES.** Pursuant to Resolution 2004-R001, DEVELOPER shall pay a right-of-way permit fee of One Hundred and Fifty Dollars and No/100 (\$150.00) simultaneous with its execution of this Permit and Agreement and may not construct or install Improvements until such time that the Permit is paid. Additionally, pursuant to Section 2-111(b) of the Edgewood City Code, DEVELOPER shall be required to pay any engineering, planning, or legal fees in excess of the permit fees, such fees being paid prior to the issuance of this permit.

11. **EFFECTIVE DATE.** This Agreement shall take effect upon the date on which this Agreement is recorded in the Public Records of Orange County, Florida.

12. **AMENDMENT.** The provisions, restrictions and covenants of this Agreement shall not be modified or amended except in a written instrument approved by a majority of the City Council of the City of Edgewood and by the DEVELOPER or Homeowners' Association. No such modification or amendment shall be effective until said written instrument has been signed, acknowledged and recorded in the Public Records of Orange County, Florida.

13. **COMPLIANCE WITH APPLICABLE LAWS.** The DEVELOPER or Homeowners' Association shall comply with all applicable State laws and CITY ordinances.

14. **DISCLAIMER OF CITY RESPONSIBILITY.** Nothing contained herein shall create any obligation on the part of the CITY to install, maintain, remove, or participate in the installation, maintenance or removal of the Improvements.

15. **SIGNATORY.** The undersigned person executing this Permit and Agreement on behalf of DEVELOPER represents and warrants that he or she has the full authority to sign this Permit and Agreement on behalf of the DEVELOPER and that he or she has the authority to fully bind DEVELOPER to the terms and conditions set forth in this Permit and Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Permit and Agreement to be duly executed, sealed and delivered, all as of the date and year first above written.

“CITY”

ATTEST: *Pomeau*  
City Clerk

BY: *Michael Jaquez*  
Mayor

“DEVELOPER”

BEAZER HOMES CORP., a  
Tennessee corporation

By: *D. G. Byrnes*  
Name: **DAVID G. BYRNES**  
Title: **PRESIDENT, ORLANDO  
DIVISION**

(CORPORATE SEAL)

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of August, 2008, by **DAVID G. BYRNES**, as President, Orlando Division, **BEAZER HOMES CORP.**, a Tennessee corporation, who {X} is personally known to me who or { } has produced \_\_\_\_\_ as identification.

*Dorothy H. Kenney*  
**NOTARY PUBLIC**  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Commission #: \_\_\_\_\_

DOROTHY H. KENNEY  
Notary Public, State of Florida  
My comm. exp. Apr. 13, 2008  
Comm. No. DD 303586

## EXHIBIT "A"

### Legal Description

A portion of Section 14, Township 23 South, Range 29 East, Orange County, Florida, being more particularly described as follows:

Commence at the northeast corner of the Northwest 1/4 of sold Section 14; thence run S 00°11'29" E, along the east line of the Northwest 1/4 of said Section 14, a distance of 30.00 feet; thence run S 89°29'52" W, a distance of 30.00 feet the POINT OF BEGINNING, said point being on the westerly right-of-way line of Jessamine Lane as recorded in Deed Book 1008, Page 308, Public Records of Orange County, Florida; thence run along the westerly right-of-way line of said Jessamine Lane the following two (2) courses and distances; run S 00°11'29" E, a distance of 1260.54 feet; thence run S 57°30'37" W, a distance of 256.21 feet; thence run N32°29'2Y' W, a distance of 20.00 feet to a point that is 20.00 feet northerly of (when measured perpendicular to) the northerly line of an Ingress/Egress Easement recorded in Official Records Book 2848, Page 263, Public Records of Orange County, Florida; said point also being 50.00 feet northerly of (when measured perpendicular to the northerly line of the "THE WOODS OF LAKE JESSAMINE", according to the plot thereof, as recorded in Plot Book 33, Page 23, Public Records of Orange County, Florida; thence run parallel with and 50.00 feet northerly of the north line and 50.00 feet westerly of the west line of said "THE WOODS OF LAKE JESSAMINE", the following two (2) courses and distances; run S 57°30'37" W a distance of 607.38 feet; thence run S 12°09'o2' E, a distance of 837.01 feet to a point that is 50.00 feet northerly of (when measured perpendicular to) the northerly line of an Ingress/Egress Easement recorded in Official Records Book 4747, Page 3964, Public Records of Orange County, Florida; thence run N 81°16'56" W, parallel with the north line of said Ingress/Egress Easement, a distance of 694.02 feet to a point on the west line (when extended north) of lands described in Official Records Book 5959, Page 2417, Public Records of Orange County, Florida; thence run S 00°42'56" W, along said west line, a distance of 1615.32 feet to a point on the south line of the Northeast 1/4 of the Southwest 1/4 of said Section 14; thence run S 89°37'52" W, along the south line of the Northeast 1/4 of the Southwest 1/4 of said Section 14, a distance of 17.93 feet to a point on the east line of "LAKE JESSAMINE SHORES", according to the plat thereof, as recorded in Plat Book "R", Page 41, Public Records of Orange County, Florida; said point also being the east line of the West 1/2 of the Southwest 1/4 of said Section 14; thence run N 00°11'Og" W, along the East line of the West 1/2 of the Southwest 1/4 of said Section 14, a distance of 382.67 feet to a point on the north line of lands described in Official Records Book 1654, Page 835, Public Records of Orange County, Florida; thence run along said north line the following two courses and distances; run N 89°58'22" W, a distance of 682.95 feet thence run N 62°55'27" W, a distance of 241.89 feet to a point on the east line of lands described in Official Records Book 4844, Page 3822, Public Records of Orange County, Florida; thence run N 00°11'52" W along sold east line, a distance of 799.49 feet to a point on the south line of lands described in Official Records Book 5462, Page 2417, Public Records of Orange County, Florida; thence run along the perimeter boundary lines said lands described in Official Records Book 5462, page 2417, the following three (3) courses and distances; run S 89°55'55" E, a distance of 770.00 feet; thence run N 05°19'07" W, a distance of 491.19 feet, thence run N 88°49'02" W a distance of 374.59 feet; thence run N 00°09'56" W, a distance of 813.23 feet to a point that is 100.00 feet south of the south line of the Northwest 1/4 of the Northwest 1/4 of said Section 14; thence run N 89°41'37" E, parallel with south line of the Northwest 1/4 of the Northwest 1/4 of said Section 14; a distance of 711.70 feet to a point that is 165.00 feet east of the west line of the Northeast 1/4 of the Northwest 1/4 of sold Section 14; thence run N 00°09'56" W, parallel with the west line of the Northeast 1/4 of the Northwest 1/4 of said Section 14, a distance of 1420.51 feet to a point on the south right-of-way line of Holden Avenue as recorded in Deed Book 338, Page 524, Public Records of Orange County, Florida; thence run N 89°29'52" E, along the south right-of-way line of Holden Avenue, a distance of 1130.07 feet to the POINT OF BEGINNING.

Containing 84.05 acres, more or less.

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