

REVOCABLE LICENSE AGREEMENT

THIS AGREEMENT, made this _____ day of _____ 20__, by and between:

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, hereinafter referred to as "CITY,"

and

CYPRESS BEND PROTECTIVE CORPORATION, INC., a Florida corporation, hereinafter referred to as "LICENSEE."

WITNESSETH:

WHEREAS, LICENSEE is the community master association maintaining an entrance monument sign on the real property located within the right-of-way of Cypress Bend Drive lying immediately east of Powerline Road, Pompano Beach, Florida as depicted on Exhibit "A" ("Project"); and

WHEREAS, LICENSEE desires to obtain from CITY a license to use certain CITY right-of-way property for the purpose of installing, maintaining, servicing, altering and repairing an entrance sign and associated landscaping, lighting, and fixtures at the entrance of the Cypress Bend community, located within the right-of-way of Cypress Bend Drive lying immediately east of Powerline Road, Pompano Beach, Florida; and

WHEREAS, inasmuch as the use of said CITY property by LICENSEE for this restricted purpose will not interfere with the rights enjoyed by the public and will be without cost to the public either directly or indirectly.

WHEREAS, CITY has agreed to permit LICENSEE to use a portion of said right-of-way, for the restricted use specified below for the purpose of installing, maintaining, servicing, altering and

repairing an entrance sign and associated landscaping, lighting, and fixtures at the entrance of the Cypress Bend community, now and in the future; and

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and conditions hereinafter contained, it is agreed by the parties hereto as follows:

1. AUTHORIZATION AND DESCRIPTION OF PROPERTY.

CITY hereby grants to LICENSEE, and LICENSEE hereby accepts from CITY, a non-exclusive license to occupy the right-of-way, which is set forth in Exhibit “A,” attached hereto and made a part hereof (“Property”), for the purpose of installing, maintaining, servicing, altering and repairing an entrance sign and associated landscaping, lighting, and fixtures at the entrance of the Cypress Bend community (“Improvements”), now and in the future, which is depicted in detail on Exhibit “B,” attached hereto and made a part hereof. In exchange, LICENSEE agrees to pay CITY as compensation for this License in the sum of One Dollar (\$1.00) per annum. Receipt of the first payment of One Dollar (\$1.00) is hereby acknowledged.

2. TERM.

The term of this license shall run in perpetuity provided the LICENSEE continues to maintain the Improvements in good operating condition as determined by the CITY and the surrounding Property in substantially the same condition as it existed prior to the Improvements being installed by Licensee and also as reasonably determined by the CITY. Should the CITY reasonably determine that the LICENSEE has failed to maintain the Improvements, that a higher municipal use is required of subject Property, that the public’s health, safety or welfare is at risk, or that it wishes to terminate this Agreement for any other reason, then LICENSEE shall be notified to cease use of the Property as it relates to the installation and maintenance of the Improvements. Notice shall be sent in writing, in accordance with Paragraph 11 hereof, sixty (60) days prior to termination.

3. USE OF PREMISES.

LICENSEE shall use and occupy the right-of-way for the for the purpose of installing, maintaining, servicing, altering and repairing an entrance sign and associated landscaping, lighting, and fixtures at the entrance of the Cypress Bend community, now and in the future, which is depicted in detail on Exhibit "B."

LICENSEE specifically agrees that the Property shall not be used for any other purpose whatsoever without written consent of the CITY. LICENSEE shall not permit the licensed Property to be used or occupied in any manner that is inconsistent with the use granted herein and which will violate any laws or regulations of any governmental authority. LICENSEE shall at all times, with the exception of when work is being done as approved by the City, keep and maintain Property in as good of a condition or better than prior to the start of construction of any Improvements. LICENSEE shall provide documentation (such as pictures, video, topographic surveys) to City Engineer to establish the conditions that existed within the Property prior to construction. Any and all damage caused as a result of such installation of the Project Improvements to any elements, including, but not limited to pavement, curbs, sidewalks, landscaping, trees, irrigation, utility poles, etc. located within the public right-of-way shall be restored or repaired to a condition equal to or better than that existed prior to commencement of installation of said Project Improvements. This shall include any subsurface features such as water service lines, utility access lines, covers, water meter boxes, water isolation valve systems, sanitary sewer cleanouts etc. that may deteriorate as a result of removing asphalt, base materials, compaction, paving operations etc. LICENSEE shall be responsible for verifying all underground utilities prior to digging in any area. LICENSEE shall notify all necessary utility companies, 48 hours in advance prior to digging for verification of all underground utilities, irrigation and any other obstructions and coordinate prior to initiating operations. LICENSEE agrees that this license is contingent upon LICENSEE submitting an Engineering Permit and payment of fees for same, and a site plan or location plan, blueprints and other documentation as required by the Engineering

Department for the issuance of a permit and granting of this license, which does not in any way waive any other building or construction ordinances, fees or requirements of CITY. LICENSEE shall not commence construction or occupy the right-of-way for construction purposes prior to obtaining all necessary permits and approvals.

4. ASSIGNMENT.

LICENSEE is not permitted to assign, transfer, convey or otherwise dispose of this license to any other person or corporation without the previous written consent of CITY. In the event of an attempt to assign, transfer, convey or otherwise dispose of this license to any person not specifically a party to this Agreement and license, then this license shall be null and void and terminated without notice to LICENSEE.

5. MAINTENANCE.

LICENSEE agrees to at all times maintain and repair at their sole cost and expense said entrance sign and associated landscaping, lighting, and fixtures, as described in Exhibit "B," in good working condition, to be reasonably determined at the sole discretion of the CITY, while occupying the use of CITY's Property pursuant to this Revocable License Agreement. Construction activities shall not commence until LICENSEE submits to the Engineering Department a maintenance of traffic plan for approval. LICENSEE assumes all risks in the operation and maintenance of the Project Improvements on the property and shall be solely responsible and answerable for damages related to all accidents or injuries to person or property arising out of or caused in the performance of any of the work done pursuant to the Agreement regardless whether by the LICENSEE or one of its Contractors. It is further expressly agreed by LICENSEE that it shall not make any alteration other than normal repairs and maintenance of the entrance sign and associated landscaping, lighting, and fixtures, or any other substantial alteration without the express written consent of CITY.

6. INDEMNIFICATION.

LICENSEE shall indemnify, defend and hold harmless the CITY and its officials, agents and employees from and against any and all claims, loss, suit actions, damages, liabilities, expenditures, or causes of action, including attorney fees, of any kind arising from this Revocable License Agreement. LICENSEE acknowledges and agrees that the annual License fee paid and the benefit it receives from its use of CITY's right-of-way under this Agreement shall serve as consideration for such indemnification.

LICENSEE shall be solely responsible and answerable for damages related to all accident or injuries to person or property arising out of or caused in the performance of the work done pursuant to this Agreement by or on behalf of LICENSEE. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by the CITY as provided for in § 768.28, Florida Statutes.

7. INSURANCE.

LICENSEE shall procure at its own cost and expense Comprehensive General Liability Insurance coverage in an amount not less than One Million (\$1,000,000.00) Dollars combined single limit in addition to any other insurance or bond CITY may require, which insurance will protect LICENSEE, CITY, and their officers and employees from any claims for damages to property and for personal injuries, including death, which may arise on said property during the term of this agreement and any renewals. The insurance policy shall contain a sixty (60) day cancellation clause period and a Certificate of Insurance shall be furnished the CITY, naming the City of Pompano Beach as an additional insured pursuant to this Agreement, said Certificate of Insurance to be approved by the CITY's Risk Manager prior to execution of this Agreement. A copy of said Certificate is attached hereto and designated as Exhibit "C."

8. TAXES. As further consideration of this License Agreement, LICENSEE further agrees to pay any taxes of whatever nature which may validly be levied against the premises or pursuant to this Agreement during the continuance of this Agreement.

9. AMENDMENTS.

No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.

10. SURRENDER UPON TERMINATION.

LICENSEE shall peaceably surrender this license and restore the licensed Property to its original condition or better upon written notice, as provided for in Section 12 by CITY that LICENSEE has failed to maintain the improvements to the CITY's satisfaction or other reasons as provided for in Section 2 of this Agreement.

LICENSEE shall remove from the licensed Property, at LICENSEE's own expense, any subject improvements placed thereon and, thereafter, the License shall be considered abandoned and terminated. Upon completion of said removal, the condition of the Property shall be such that it is safe and not a hazard and in its original condition or better as determined by the CITY.

The parties recognize this Agreement is for the use of Property within public right-of-way as depicted in Exhibit "A."

11. WAIVER.

Failure of the CITY to insist upon strict performance of any covenant or condition of this Revocable License, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Revocable License Agreement shall be waived or modified except by the parties hereto in writing.

12. TERMINATION.

This Revocable License Agreement may be cancelled by either party with reasonable cause for the reasons described in Section 2 at any time during the term thereof upon sixty (60) days written notice to the other of its desire to terminate this Revocable License Agreement. It is expressly

understood by the parties that LICENSEE is receiving from CITY a Revocable License that may be terminated by the CITY due to failure by the LICENSEE to maintain the improvements due to the CITY's need to use the Property for a higher municipal purpose, because the LICENSEE's use of the Property is a risk to the public's health, safety or welfare as determined by CITY, or the CITY desires termination of this Agreement for other reasons, Said removal shall be solely at LICENSEE's own expense with no right to compensation of any kind from CITY.

13. NOTICES.

Any notice or demand, which under the terms of this Revocable License Agreement or by any statute or ordinance must be given or made by a party hereto shall be in writing and shall be given by certified mail to the other party at the address set forth below, or to such other address as such party may from time to time designate by notice.

Addresses of the parties are as follows:

FOR CITY: City Manager
City of Pompano Beach
Post Office Box 1300
Pompano Beach, Florida 33061

COPY TO: City Attorney
City of Pompano Beach
Post Office Box 2083
Pompano Beach, Florida 33061

FOR LICENSEE: Cypress Bend Protective Corp.
2301 S. Cypress Bend Dr.
Pompano Beach, FL 33069
Attention: Janice Elliott

COPY TO: Current Registered Agent

14. ENTIRE AGREEMENT.

This Revocable License Agreement embodies the entire agreement between the parties. It may not be modified or terminated except as provided herein. If any provision herein is invalid, it shall be considered deleted here from, and shall not invalidate the remaining provisions.

15. MISCELLANEOUS PROVISION.

It is expressly understood and agreed that no real or personal property is leased to LICENSEE; that it is a LICENSEE , not Lessee; that the LICENSEE's right to occupy the right of- way is subordinate to CITY's (or any franchisee of CITY) use of said licensed premises and should any relocation of any CITY owned utility be necessitated at any time in the future, then LICENSEE shall relocate subject to approval of relocation plans by the CITY, if practicable, or terminate its use of the licensed premises at its own expense.

16. LAWS AND ORDINANCES.

LICENSEE shall observe all laws and ordinances of the CITY, county, state and Federal agencies directly relating its use of the Property.

17. RECORDATION OF AGREEMENT.

This Revocable License Agreement shall be recorded in the Public Records of Broward County, Florida, at the expense of LICENSEE, with a copy given to CITY.

18. GOVERNING LAW AND VENUE

The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and LICENSEE submit to the jurisdiction of Florida courts and federal courts located in Florida with respect to claims under this Revocable License Agreement. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given

herein, now or hereafter existing at law or in equity or by statute or otherwise, but the LICENSEE and the CITY waive all rights to sue or collect from the other any damages other than direct damages and they expressly waive benefit of the bargain, punitive, special, exemplary, treble or consequential damages.

19. NO THIRD PARTY BENEFICIARIES.

The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this License Agreement. None of the parties intends to directly or substantially benefit a third party by this License Agreement. The parties agree that there are no third party beneficiaries to this License Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this License Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

20. NON-DISCRIMINATION.

LICENSEE shall not discriminate against any Person in the performance of duties, responsibilities and obligations under this License Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

21. CONTINUITY.

This License Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

22. PUBLIC RECORDS.

Each party shall maintain its own respective records and documents associated with this License Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees of non-compliance with that law.

23. FORCE MAJEURE.

Neither party shall be obligated to perform any duty, requirement or obligation under this License Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of LICENSEE be deemed Force Majeure.

24. ENTIRE AGREEMENT AND INTERPRETATION.

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and LICENSEE and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against either party.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

[Signatures on Following Two Pages]

“CITY”:

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this _____ day of _____, 20__ by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"LICENSEE":

Witnesses:

CYPRESS BEND PROTECTIVE
CORPORATION, INC.

Dorothy J. Bergantino
DOROTHY J. BERGANTINO
Print Name

By: Barbara Peters, Inc
Barbara Peters
Typed or Printed Name

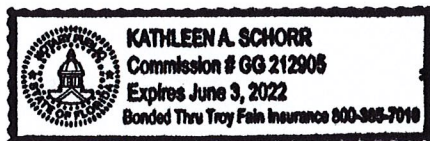
Janice Elliott
Janice Elliott
Print Name

Title: President
(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 26th day of JUNE, 2018 by BARBARA PETERS as PRESIDENT of CYPRESS BEND PROTECTIVE CORP, A Florida corporation, on behalf of the corporation. He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



Kathleen A. Schorr
NOTARY PUBLIC, STATE OF FLORIDA

KATHLEEN A. SCHORR
(Name of Acknowledger Typed, Printed or Stamped)

GG212905
Commission Number