

This instrument prepared
Without opinion of title and
After recording return to:

ATTORNEY'S OFFICE NAME, ADDRESS & PHONE #

EASEMENT USE COVENANT

THIS EASEMENT USE COVENANT (the "**Covenant**") is made this ___ day of today's date, by owner's name dated date ("**Owner**"), in favor of The City of Naples, a municipal corporation of the State of Florida ("**City**").

RECITALS:

WHEREAS, Owner is the record owner of the fee simple interest in and to that certain parcel of real property legally described as Lot XX, Block XX, _____, according to the Plat thereof as recorded at Plat Book #, at Page #, of the Public Records of Collier County, Florida (the "**Property**"); and

WHEREAS, pursuant to the subdivision plat of _____, according to the Plat thereof as recorded at Plat Book X, at Page X, of the Public Records of Collier County, Florida, the Property is subject to dedicated utility and drainage easements in favor of the City along the Northern, Eastern, and Southern boundary lines, as depicted on the survey attached hereto as Exhibit "A" and incorporated herein by reference (the "**Easements**," and those portions of the Property that are subject to the Easements are hereinafter collectively called the "**Easement Areas**"); and

WHEREAS, a fence has been constructed on the Property within the Easement Areas, (the "**Fence**"), which Fence also serves as the required residential swimming barrier under the Residential Swimming Pool Safety Act, Chapter 515, Florida Statutes (as amended from time to time, hereinafter called the "**Act**"); and

WHEREAS, the City and/or franchised utility providers may be required from time to time to excavate the Easement Areas for purposes of accessing the drainage lines, utility transmission lines, and/or infrastructure located therein; and

WHEREAS, in the event of such excavation, the Fence must be removed from the Easement Areas, thereby creating an unsafe condition insofar as removal of any portion of the Fence will create an opening in the required residential swimming pool barrier; and

WHEREAS, the City is willing to permit the Fence to remain in the Easement Area provided that Owner or Owner's successor(s) in title to the Property are bound by the terms of this Covenant, and Owner has agreed to voluntarily execute and record this Covenant as a restrictive covenant on the Property for purposes of so binding Owner its successors to the terms, conditions, obligations, and indemnities set forth herein.

NOW THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00), the privilege of maintaining the Fence in the Easement Area, and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, Owner hereby agrees that the following covenants, terms, conditions, obligations, and indemnities shall run with title to the Property and shall bind Owner and its successors in title to the Property, and shall inure to the benefit of the City:

1. **Disclosure of Covenant.** Owner and each of Owner's successors in title to the Property shall disclose the existence of this Covenant in writing to any prospective purchaser of the Property, and a copy of this Covenant shall be attached to and incorporated into any agreement for the purchase and sale of the Property.
2. **Expenses of Fence Removal; Restoration of Fence.** The City shall bear no expense in connection with any required removal of the Fence from time to time (the "**Removal Expenses**"), and any such Removal Expenses shall be borne solely by Owner (or Owner's successor in title to the Property at the time the Removal Expense is incurred). Owner or its successor in title to the Property, as applicable, shall pay any such Removal Expense within ten (10) days after the City submits the corresponding invoices for payment, and the Removal Expenses shall bear interest at the highest rate permitted by law if unpaid within said 10-day period. In addition to the foregoing, Owner (or Owner's successor in title to the Property at the time the Fence is so removed) shall be solely responsible for restoring or replacing the Fence, as necessary, following completion of the related work within the Easement Area.
3. **Maintenance of Fence.** Owner agrees and acknowledges that the Fence serves as the required residential swimming pool barrier under the Act, and that the City has a compelling public interest in ensuring that the Fence is properly maintained in compliance with the Act. Owner and each of Owner's successors in interest to the Property hereby covenants with the City that during their respective period of ownership they shall: i. Maintain the Fence at all times in a manner consistent with the Act; ii. Promptly and expeditiously repair or replace any gaps in the Fence (regardless of the cause); and iii. During any period of time that a Fence segment is removed, or any period that the Fence otherwise does not satisfy the requirements of the Act, to install and maintain an alternative barrier that otherwise complies with the Act's requirements.
4. **Indemnification and Hold Harmless.** Owner and each of Owner's successors in title to the Property (each hereinafter called an "**Indemnifying Party**") hereby agrees that they shall release, indemnify and hold the City harmless for and against any and all obligations, claims, liabilities, expenses and/ or fees (including reasonable attorney's fees and court costs) including personal injury or property damage arising out of violation of this Covenant by such Indemnifying Party or its contractors, agents, employees or invitees at any time. Further, each Indemnifying Party agrees to release and hold the City harmless from and against any and all obligations, claims, liabilities, expenses and/ or fees (including reasonable attorney's fees and court costs) including personal injury or property damage arising out of any entry into the Easement Areas or removal of the Fence by the City or its employees, agents, or contractors. This Covenant shall be recorded in the Public Records of Collier County, Florida, at Owner's sole cost and expense, and shall bind the Owner and its successors in title to the Property.

IN WITNESS WHEREOF, the parties hereto have caused this Easement Use Agreement to be executed as of the day, month and year as first above written.

Signed, Sealed and Delivered
In the presence of:

OWNER:

Witnesses:

Property Owner dated date

Property Owner dated date

Print Name

Print Name

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged and witnessed before me this ____ day of **date**, by **Property Owner**, who are personally known to me or who produced _____, as identification.

I am a commissioned notary public of the State of _____ and my commission expires _____.

NOTARY PUBLIC

Name: _____
(Type or Print)

[affix seal]

My Commission Expires: _____

EXHIBIT "A"