

Prepare and Return to:
Arbor Mill at Mill Creek Homeowners Association, Inc.
c/o Priority Community Management
2800 N. 6th Street, Unit 1, PMB #305
St. Augustine, FL 32084

RESTRICTIVE COVENANT AND WAIVER OF EASEMENT AGREEMENT

THIS RESTRICTIVE COVENANT AND WAIVER OF EASEMENT AGREEMENT (this “Agreement”) is made and entered into as last date signed by the parties below (“Effective Date”), by and between the Arbor Mill at Mill Creek Homeowners Association, Inc., a Florida nonprofit corporation, (the “HOA”) and, _____ (the “Homeowners”).
(include all Homeowners)

Recitals:

A. Homeowners are the owners of Lot ____ (the “Lot”) of Arbor Mill Phase One Plat (the “Plat”) recorded in the official records of St. Johns County Map Book 76 pages 80-94. within the community located in St. Johns County (the “County”) known as Arbor Mill at Mill Creek (the “Community”) also known at _____. The HOA is the homeowners association for the Community as established in the Covenants and Restrictions recorded in the official records of St. Johns County Book 4037 and pages 1418-1456 (the “Covenants”).
(Address)

B. Within the Community ponds, pipes, grading other drainage structures and facilities (the “Storm Water System”) are constructed in accordance from the approved constructions plans from the County, the Saint John’s River Water Management District (“SJRWMD”), the Army Corps of Engineers (“ACOE”) and any other governmental or quasi-governmental authority.

C. The Plat contains an 8’ Maintenance and Access Easement (“Easement”) along all the pond banks. The purpose of the easement is to allow the HOA the ability to access and maintain the storm water system and the landscaping in the event that the lot owner fails to do so and any and all other rights whether they are reserved in the Plat, deed, the Covenants.

D. Lot owners are prohibited from constructing improvements on or within the Maintenance and Access Easements except as approved by the HOA.

E. Homeowner is the current owner of Lot and has requested a waiver of the prohibition of constructing improvements (“Improvements”) within the maintenance easement located on the Lot for the construction of the improvements attached as Exhibit “A” (the “Plans”).

F. Homeowner has purchased Lot and the improvements to the Lot.

IN CONSIDERATION of the mutual undertakings of the HOA and Homeowner set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The Recitals listed above are true and correct and are incorporated into this Agreement by this reference.

2. Plans. The Plans for the improvements that Homeowners propose to construct were submitted to the HOA and are attached to this Agreement as Exhibit "A". The HOA did review the Plans. The HOA makes no determination as to the quality or to the affect that these Plans may or may not cause to the Stormwater System. Homeowners shall not and do not look to the HOA for any approval as to the fitness or feasibility of the construction. Any adverse effect caused by the construction of the proposed improvements shall be remediated at the sole cost of owners of record of Lot ____ at the time the adverse condition is discovered or maintenance is required ("Current Owners"). This shall be binding on all future owners of Lot _____ and their successors or assigns. All Plans must be submitted and approved by the County, SJRWMD, ACOE and any other governmental or quasi-governmental agency that has or could have jurisdiction or approval rights. There shall be no grading changes to the Stormwater System. Any irrigation or trees located within or affected by the Plans must be timely relocated, replaced or repaired to function or grow properly and conform to the requirements of the County, SJRWMD, ACOE and any other governmental or quasi-governmental agency, at Current Owner's sole cost and expense.

3. Waiver of Easement. In accordance with the foregoing, the HOA hereby waives the building restriction of that portion of the Easement as shown on the Plat for the sole purpose of the construction of the improvement in the Plans. The HOA shall allow for the construction of the improvements per the submitted Plans pending the above referenced approvals from the appropriate HOA, governmental and quasi-governmental authorities.

4. Maintenance Obligation. Homeowner and its successors and assigns agree and covenant that maintenance will be required within then Easement or Storm Water System located within Lot for the Storm Water System, irrigation system, the vegetation, the trees and mowing the pond bank and the Current Owner shall be solely responsible for the maintenance and any costs associated for the maintenance ("Required Maintenance"). Further, if the Current Owner failure to perform the Required Maintenance results in costs or damages to the HOA or others, the Current Owner shall be liable for those costs and damages. Notwithstanding the foregoing, the HOA does not relinquish any right for access or maintenance within the Easement. In the event that the HOA is required to step in for the purpose of performing the Required Maintenance the Current Owners shall reimburse the HOA for the cost of the any such Required Maintenance plus fifteen percent (15%). The reimbursement to the HOA shall be assessed in the manner stipulated within the Covenants and the HOA shall have the right to place liens on Lot if the Current Owner fails in its obligations.

5. Indemnity for Damages Caused by Construction. Homeowners, and their successors and assigns, covenants and agree to indemnify, defend and hold the HOA, harmless from

and against any and all claims, demands, lawsuits, costs, damages, expenses and liabilities (including, but not limited to, personal injury or property damage claims, mechanic's or other liens) caused by or incurred in connection with the construction, design and maintenance of the proposed improvements. The indemnification shall include reasonable attorney's fees.

Further, Homeowners and their successors and assigns hereby indemnify St. Johns County against any and all loss, cost or damage arising from any claim by present or future owners of the property or adjacent properties that St. Johns County has any liability or damages to that portion of the Improvements encroaching into the Easement, or damages to adjacent properties, that may be caused by the maintenance of the Easement and the drainage improvements that may be located in or affected by the Easement at present or in the future.

6. Survival and Recording. This Agreement and all the provisions of the agreement are for the benefit of the land and shall run with the land. The covenants within this agreement shall run with the land and are binding upon, and inure to the benefit of, the parties and their respective successors and assigns. This Agreement shall be recorded in the St. Johns County Official Records.

7. Recognition. Homeowners recognize that this Agreement will affect the title to the Lot and hereby waive any objection to this exception. Homeowner also recognizes that this Agreement is for Homeowners' benefit and at the sole request of the Homeowners.

8. Termination of Agreement. The approval for construction granted in this agreement shall be valid for six (6) months. If Homeowners have not constructed within six (6) months, the waiver shall be rescinded and must be applied for again for any subsequent request to construct any improvement within the easement.

Signature Page To Follow

IN WITNESS WHEREOF, the undersigned has signed and sealed this as of the date written below.

Arbor Mill at Mill Creek Homeowners Association Inc., a Florida non-profit corporation

By: _____

Name: _____

Date: _____

Witness: _____

Name: _____

Witness: _____

Name: _____

STATE OF FLORIDA)

COUNTY OF ST. JOHNS)

The foregoing instrument was acknowledged before me this _____ day of _____ 20____, by _____, as _____ of Arbor Mill at Mill Creek Homeowners Association Inc., a Florida non-profit corporation. He/She is personally known to me or produced _____ as identification.

NOTARY PUBLIC, State of Florida at Large
(Print Name) _____
Commission # _____
My Commission Expires: _____

IN WITNESS WHEREOF, the undersigned has signed and sealed this as of the date written below.

Arbor Mill at Mill Creek Property Owner:

By: _____
(1st HOMEOWNER SIGNATURE)

Name: _____
(1st HOMEOWNER PRINT NAME)

Date:

By: _____
(2nd HOMEOWNER SIGNATURE)

Name: _____
(2nd HOMEOWNER PRINT NAME)

Date:

Witness: _____

Name: _____

Witness: _____

Name: _____

STATE OF FLORIDA)

COUNTY OF ST. JOHNS)

The foregoing instrument was acknowledged before me this _____ day of _____ 20____, by _____. He/She is personally known to me or produced _____ as identification.

NOTARY PUBLIC, State of Florida at Large
(Print Name) _____
Commission # _____
My Commission Expires: _____

Exhibit “A”
The Plans