

THIS INSTRUMENT WAS PREPARED BY  
AND SHOULD BE RETURNED TO:

Kyle Shephard, Esquire  
City of Orlando  
Orlando City Hall  
400 S. Orange Avenue  
Orlando, Florida 32801  
(407) 246-2295

### **EASEMENT ENCROACHMENT AGREEMENT**

**THIS EASEMENT ENCROACHMENT AGREEMENT** (the "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between the **CITY OF ORLANDO, FLORIDA** (the "City"), a municipal corporation organized and existing by virtue of the Laws of the State of Florida, the address of which is Orlando City Hall, 400 South Orange Avenue, Orlando, Florida 32801, and **JEFFERSON EOLA, LLC** ("Jefferson"), a Florida limited partnership whose address is 112 Lake Avenue, Orlando, Florida 32801.

### **WITNESSETH**

**WHEREAS**, Jefferson is the owner of that certain real property located at 420 and 412 E. Church Street, more particularly described in the attached **Exhibit "A"** (the "Subject Property");

**WHEREAS**, pursuant to Ordinance No. 2013-49 (approving an amendment to the Planned Development known as Orlando Lutheran Towers), Jefferson is required to dedicate an easement to the City along Mariposa St., S. Osceola Ave., E. Church St. and Lake Ave. for City services and sidewalk (the "City Services Sidewalk Easement");

**WHEREAS**, Jefferson has applied to the City for a building permit (BLD2013-09803) to construct a 9-story residential and commercial project (the "Project") located on the Property;

**WHEREAS**, Jefferson intends to construct certain structural elements (the "Encroachments") within the space under a portion of the City Services Sidewalk Easement;

**WHEREAS**, Jefferson and the City desire to set the parties' agreements with respect to the encroachment of the building's structural elements; and

**WHEREAS**, the Project will continue to be subject to all applicable provisions of the Orlando City Code, including, but not limited to the Building Code of the City of Orlando (Chapter 13, Orlando City Code); and

**NOW, THEREFORE**, for and in consideration of the premises hereof, of the sum of Ten Dollars (\$10.00) paid by Jefferson to the City, and for other good and valuable considerations,

the receipt and sufficiency of which are hereby acknowledged, Jefferson and the City hereby agree as follows:

1. Preamble and Exhibits Incorporated. The foregoing recitals are true and correct and are incorporated herein as part of this Agreement. All exhibits referred to and attached to this Agreement are likewise incorporated herein as a part of this Agreement.

2. Easement Encroachment. The City hereby approves the encroachment and utilization of that portion of the subterranean space below the City Services Sidewalk Easement as more particularly described and depicted in Exhibit "B" attached hereto (the "Subterranean Space"), for the construction, use, maintenance, and repair of the Encroachment. This right shall include the reasonable right of access necessary to exercise and enjoy such grant, provided no damage is caused to the Subterranean Space and underlying City Services Sidewalk Easement and there is no unreasonable interference with the public use of the remaining City Services Sidewalk Easement, and provided further that any costs or expense associated with the maintenance and repair of the Encroachments, including without limitation costs and expenses associated with accessing the Encroachments and maintaining utility operations during such access, be fully borne by Jefferson.

3. Construction. Construction of the Encroachments shall be undertaken by Jefferson at its sole cost and expense pursuant to plans and specifications approved by the City. Jefferson shall construct the Encroachments diligently and in a good and workmanlike manner, and shall maintain and keep the Encroachments in good order.

4. Indemnification. Jefferson shall indemnify, defend and hold harmless the City, its agents, employees and elected and appointed officials, from and against all claims, damages, losses and expenses (including all costs and attorneys' fees and all costs and attorneys' fees on appeal), for personal injury, death, property, damage or other loss arising out of use and enjoyment of Subterranean Space.

5. Litigation and Attorneys' Fees. In the event either party to this Agreement should bring suit to enforce or interpret any provision hereof, the prevailing party in any such litigation shall be entitled to recover from the other party, in addition to any other relief granted as a result of such litigation, all costs and expenses of such litigation, including, but not limited to, reasonable attorneys' fees and paralegals' fees incurred prior to trial, at trial, on appeal, and in connection with any administrative or bankruptcy proceedings.

6. Binding Effect. The rights herein granted by the City shall run in favor of Jefferson, its successors and assigns, and their respective employees, customers and other invitees. The terms, conditions, and obligations of this Agreement shall run with the title to the Project for the duration of this Agreement and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

7. Controlling Laws.

(a) This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the Laws of the State of Florida, and all duly adopted ordinances, regulations, and policies of the City now in effect and those hereinafter adopted.

(b) The location for settlement of any and all claims, controversies, disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be in Orange County, Florida.

(c) The parties to this Agreement agree to comply with all applicable federal, state, and local laws, ordinances, rules and regulations pertaining to the utilization of the property under this Agreement.

8. Effective Date. The effective date of this Agreement is the date of its execution by the last party to execute it.

9. Negotiation. The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arms-length and that this Agreement and all documents executed in connection herewith were prepared and executed without undue influence exerted by any party or on any party. Further, this Agreement was drafted jointly by all parties, and no party is entitled to the benefit of any rules of construction with respect to the interpretation of any terms, conditions or provisions of this Agreement in favor of or against any person or party who drafted this Agreement.

10. No Waiver of Regulatory Authority. Jefferson acknowledges that the City is the entity responsible for issuing building permits and certain other types of permits that will be required in connection with activities in the Air Space and underlying right of way, and the Developer further acknowledges that nothing in this Agreement constitutes or is intended to operate as a waiver of such regulatory authority.

11. Miscellaneous.

(a) This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understanding, and agreements. This Agreement may not be terminated, modified or amended except by an instrument in writing signed by each of the parties and any mortgagee(s) of their respective portions of or interests in the Air Space or underlying right of way.

(b) If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.

**IN WITNESS WHEREOF**, the City and Jefferson below set their hand and seal, and execute this Easement Encroachment Agreement in a manner and form sufficient to bind them as of the day and year first above written.

**\*\*[Remainder of page intentionally left blank. Signature page(s) to follow.]\*\***

Signed, sealed and delivered  
in the presence of:

**JEFFERSON EOLA, LLC**, a Florida limited  
partnership

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

**CITY:**

**CITY OF ORLANDO, FLORIDA**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Alana Brenner, City Clerk

Approved As To Form And Legality  
(for the use and reliance of the  
City of Orlando, Florida only)

\_\_\_\_\_, 2014

\_\_\_\_\_  
City Attorney

**\*\*[Remainder of page intentionally left blank. Notary page(s) to follow.]\*\***

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_, as \_\_\_\_\_ of JEFFERSON EOLA, LLC, a Florida limited partnership, on behalf of the corporation. He (She) ☐ is personally known to me or ☐ has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public - State of Florida  
Commission No.: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

Personally appeared before me, the undersigned authority, \_\_\_\_\_ and \_\_\_\_\_, well known to me to be the Mayor and City Clerk, respectively, of the City of Orlando, and acknowledged before me that they executed the foregoing instrument on behalf of the City of Orlando, as its true act and deed, and that they were duly authorized to do so.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public - State of Florida  
Commission No.: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

## EXHIBIT “A”

## Lake Avenue

