

THIS INSTRUMENT PREPARED BY:

Roy K. Payne, Esq.
Chief Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32802
(407) 246-2295

DRAINAGE EASEMENT ENCROACHMENT AGREEMENT

THIS DRAINAGE EASEMENT ENCROACHMENT AGREEMENT, made and entered into this ____ day of _____, 2014, by and between **CITY OF ORLANDO**, a Florida municipal corporation, whose address is 400 S. Orlando Ave., Orlando, FL, 32802, (hereinafter referred to as "CITY"), and **CHARLES M. PRICE** and **MELISSA J. PRICE**, whose address is 2614 N. Westmoreland Drive, Orlando, FL, 32804, (hereinafter referred to as the "OWNER").

RECITALS:

WHEREAS, OWNER is the owner of certain real property located within the corporate limits of the City of Orlando, Orange County, State of Florida, located at 2614 N. Westmoreland Drive, Orlando, FL, 32804, and more particularly depicted in **Exhibit "A"** attached hereto and incorporated herein by reference (the "OWNER's Property"); and

WHEREAS, OWNER has constructed and will maintain a fence and portions of a house and pool deck, ("Encroachments") within drainage easements in favor of the CITY, ("Drainage Easements"), as shown in **Exhibit "A"**, attached hereto and made a part hereof by reference, which Drainage Easements were created by those certain Easements recorded in Official Records Book 1165, Page 494, and Official Records Book 1165, Page 496, Public Records of Orange County, Florida; and

WHEREAS, CITY has installed and is currently operating and maintaining a stormwater pipe, "Pipe," within the Drainage Easements; and

WHEREAS, Section 61.203 of the Orlando City Code requires that the OWNER enter into a binding agreement authorizing the Encroachments within the Drainage Easements and providing for OWNER's assumption of certain obligations; and

WHEREAS, the Encroachments and OWNER's Property will continue to be subject to all applicable provisions of the Orlando City Code and any other applicable government regulation, and this Agreement does not vest any particular manner of development of the OWNER's Property.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties hereto, the parties agree as follows:

1. Recitals. The foregoing Recitals are true and correct and incorporated into the substantive body of this Agreement.
2. Owner. OWNER, as used hereinafter in this Agreement, means the person, persons, entity and entities that own the OWNER's Property at the operative time.
3. Encroachments. The CITY hereby grants permission for the Encroachments within the Drainage Easements, strictly limited to the area described and shown in **Exhibit A**, and subject to the terms of this Agreement.
4. Release. OWNER hereby releases the CITY, its representatives, employees and elected officials from any and all damages, claims, or liability, with respect to the Encroachments that may arise due to the CITY's use of the Drainage Easements and CITY'S operation and maintenance of the Pipe.
5. Priority of City's Right-of Way. The Encroachments shall not be operated or maintained in such a manner so as to interfere, in any way, with the CITY's use of the Drainage Easements and the CITY's operation and maintenance of the Pipe. The Encroachments remain subordinate to said use, operation and maintenance.
6. Maintenance and Repair of Encroachments. In consideration for the CITY's consent to location and maintenance of the Encroachments within the Drainage Easements, as described herein, the OWNER agrees, at its sole cost and expense, to maintain, repair and operate the Encroachments consistent with all applicable laws, codes, and regulations.
7. No Waiver. This Agreement does not constitute a waiver of the CITY's regulatory authority and the OWNER's Property remains subject to all applicable laws, rules, codes and regulations.

8. Insurance. Owner shall possess and maintain, at all times during the term of this Agreement: homeowner's liability insurance, in order to protect the CITY from any liability, claims, damages, losses or expenses arising from or out of in any way connected with this Agreement. Owner hereby represents and confirms that CITY shall either be defined as a "covered person" under the terms of Owner's homeowner's liability policy or CITY shall be listed as an additional insured.

9. Indemnification. The OWNER agrees that it shall indemnify, hold harmless and defend the CITY, its representatives, employees and elected and appointed officials from and against all claims, damages, loss and expenses of any sort including reasonable attorney's fees and costs including appeals, arising out of or resulting from any tort, intentional action, negligent act or omission of the OWNER, its tenants, agents, subcontractors, or anyone for whose act or acts any of them may be liable, for acts or omissions occurring in that portion of the Drainage Easements on, under or through which the Encroachments are located or resulting from the repair or maintenance of the Encroachments.

10. Representatives Bound Hereby. This Agreement shall be recorded and shall be binding upon the successors, heirs, executors, administrators, representatives, or assigns of the OWNER, and upon all persons acquiring an interest thereunder and shall be a restrictive covenant running with the OWNER's Property.

11. Recording. The OWNER will record this Agreement, at its expense, in the Public Records of Orange County, Florida, where it shall encumber the OWNER's Property.

12. 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.

13. Miscellaneous.

- a. This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Any amendments to or waivers of the provisions herein shall be made by the parties in writing. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.
- 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.

14. Legal Counsel. OWNER acknowledges that it has had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement, and that OWNER represents and warrants that it has sought such independent legal advice and counsel.

15. Attorney's Fees. OWNER agrees that it shall be responsible for reasonable attorney's fees incurred by CITY, if CITY is required to take any actions, through litigation or otherwise, to enforce this Agreement.

16. Negotiation. The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arm's 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 parties are 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.

17. Termination. This Agreement may be terminated by mutual consent of the parties hereto or upon default as provided below.

18. Defaults. Failure by either party to comply with or perform any of the terms, conditions, covenants, agreements or obligations contained in this Agreement to be performed by each of them respectively, shall constitute a default under this Agreement, and (i) if such default is not cured or remedied within sixty (60) days after the non-defaulting party provides written notice to the defaulting party specifying with particularity the nature of such default, or (ii) if such default cannot be reasonably cured or remedied within such sixty (60) day period, the defaulting party fails to commence to

cure or remedy the default within such sixty (60) day period and thereafter fails to diligently and expeditiously pursue such cure or remedy, the non-defaulting party, in its sole discretion, shall be entitled to exercise any and all rights and remedies available to it under this Agreement, at law and in equity, including without limitation, the right to terminate this Agreement upon written notice to the defaulting party. Upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise provided herein.

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

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

ATTEST:

CITY OF ORLANDO, FLORIDA, a municipal corporation, organized and existing under the laws of the State of Florida

By: _____
Alana Brenner, City Clerk

By: _____
Mayor / Mayor Pro Tem

Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, and Alana C. Brenner, to me known as the Mayor/Mayor Pro Tem and City Clerk respectively, of the City of Orlando, who acknowledged before me that they have executed the foregoing instrument for the purposes therein expressed, and that they were duly authorized to do so.

Notary Public: _____
Commission Expires: _____

TWO WITNESSES:

[Signature]
Print Name: JUSTIN HAWKIN

[Signature]
Print Name: MISY ALBERY

OWNER:

Charles M. Price

Sign: [Signature]

Print Name: Charles Price

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this 7th day of May, 2014, by Charles M. Price who is personally known to me or who has produced FID as identification.

[Signature]
NOTARY PUBLIC
My Commission Expires _____

TWO WITNESSES:

[Signature]
Print Name: JUSTIN HAWKIN

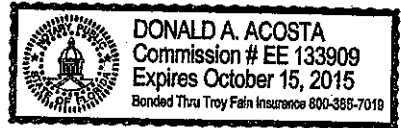
[Signature]
Print Name: MISY ALBERY

OWNER:

Melissa J. Price

Sign: [Signature]

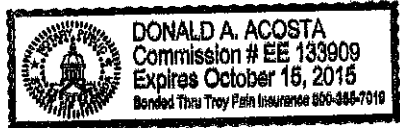
Print Name: Melissa Price



STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this 7th day of May, 2014, by Melissa J. Price who is personally known to me or who has produced FID as identification.

[Signature]
NOTARY PUBLIC
My Commission Expires _____



APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the
City of Orlando, Florida, only.

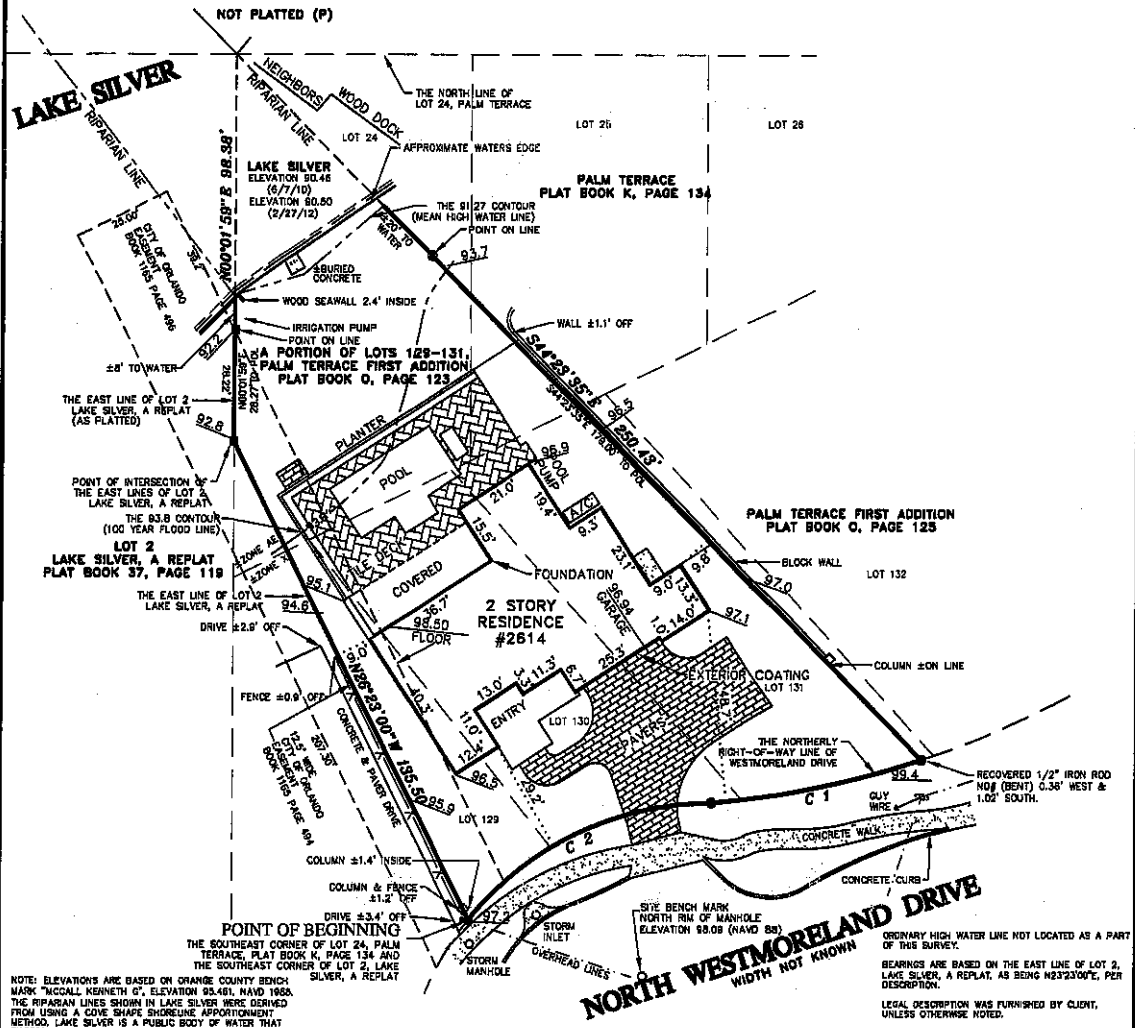
_____, 2014

Chief Assistant City Attorney

BOUNDARY SURVEY FOR CHARLES M. & MELISSA J. PRICE

LEGAL DESCRIPTION

A PORTION OF LOTS 24 AND 25, PALM TERRACE, ACCORDING TO THE PLAT RECORDED IN PLAT BOOK K, PAGE 134, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, AND A PORTION LYING EAST OF THE EAST BOUNDARY LINE OF SAID PLAT OF PALM TERRACE, BEING ALSO A PORTION OF LOTS 129 THROUGH 131, PALM TERRACE FIRST ADDITION, ACCORDING TO THE PLAT RECORDED IN PLAT BOOK O, PAGE 125, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, ALL LYING WITHIN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 22 SOUTH, RANGE 28 EAST AND WITHIN THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 22 SOUTH, RANGE 29 EAST, ALL IN ORANGE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGIN AT THE SOUTHEAST CORNER OF SAID LOT 24, ALSO BEING THE SOUTHEAST CORNER OF LOT 2 OF LAKE SILVER, A REPLAT, ACCORDING TO THE PLAT RECORDED IN PLAT BOOK 37, PAGE 119, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN ALONG THE EAST LINE OF SAID LOT 2, NORTH 28 DEGREES 23 MINUTES 00 SECONDS WEST A DISTANCE OF 135.50 FEET TO THE WEST LINE OF SAID LOT 24, SAID POINT ALSO BEING A POINT OF INTERSECTION OF THE EAST LINES OF SAID LOT 2; THENCE RUN NORTH 00 DEGREES 01 MINUTES 59 SECONDS EAST, A DISTANCE OF 98.38 FEET TO THE NORTH LINE OF LOT 24; THENCE RUN SOUTH 44 DEGREES 25 MINUTES 35 SECONDS EAST A DISTANCE OF 250.43 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WESTMORELAND DRIVE; THENCE RUN SOUTHWESTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST ON SAID RIGHT-OF-WAY LINE 54.59 FEET WITH A DELTA OF 13 DEGREES 26 MINUTES 15 SECONDS AND A RADIUS OF 232.78 FEET AND A CHORD BEARING OF SOUTH 78 DEGREES 23 MINUTES 37 SECONDS WEST AND A CHORD DISTANCE OF 54.47 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG SAID REVERSE CURVE A DISTANCE OF 70.87 FEET WITH A DELTA OF 51 DEGREES 11 MINUTES 44 SECONDS AND A RADIUS OF 79.50 (79.31 CALCULATED) WITH A CHORD BEARING OF SOUTH 64 DEGREES 10 MINUTES 23 SECONDS WEST, A CHORD DISTANCE OF 68.53 FEET TO THE POINT OF BEGINNING.



NOTE: ELEVATIONS ARE BASED ON ORANGE COUNTY BENCH MARK 'MCALL KENNETH 67' ELEVATION 93.461, NAD 1983. THE REPARATION LINES SHOWN IN LAKE SILVER WERE DERIVED FROM USING A COVE SHAPE SHORELINE APPROPRIATE METHOD. LAKE SILVER IS A PUBLIC BODY OF WATER THAT EXISTED AT THE TIME OF STATEHOOD AS EVIDENCED BY THE ORIGINAL GOVERNMENT PLAT FOR THIS AREA.

THIS SURVEY CERTIFIED TO:
LAWRENCE R. STEINER, P.A.
HERSCHELD LAND TITLE INSURANCE COMPANY
CHARLES M. PRICE
MELISSA J. PRICE

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	BEARING	CHORD
C 1	54.59'	232.78'	13°26'15"	N78°23'37"E	54.47'
C 2	70.87'	79.50'	51°11'44"	S64°10'23"W	68.53'

TOPOGRAPHIC SURVEY: 6/7/10
ADD 100 YEAR FLOOD LINE: 9/9/10
ADD STEM WALLS: 10/13/10
FINAL SURVEY: 2/27/12
REVISED:
REVISED:

NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A LICENSED SURVEYOR AND MAPPER. ADDITIONS AND DELETIONS TO SURVEY MAPS, SKETCHES OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.

MICHAEL R. SOUTHWORTH, PSM #1439
FOR THE FIRM OF ALTAMONTE SURVEYING AND PLATTING, INC. #LB 6300

SCALE: 1"=30'
REVIEWED BY: MWS
DRAWN BY: LJO
DATE: 9/14/09
JOB No.: 27776

LEGEND

- - RECOVERED 4"x4" CONCRETE MONUMENT NO#
- ▲ - RECOVERED NAIL & BOX #
- ⊗ - RECOVERED X CUT IN CONCRETE
- ⊙ - RECOVERED 1/2" IRON ROD #
- ⊕ - RECOVERED 1/2" IRON ROD NO #
- ⊖ - RECOVERED 5/8" IRON ROD NO #
- ⊗ - SET 1/2" IRON ROD #LB 6300
- ⊙ - POWER POLE AS SHOWN
- ⊖ - WOOD FENCE AS SHOWN
- ⊗ - POST & WIRE FENCE
- ⊕ - CONCRETE SLAB AS SHOWN

0 = CENTRAL ANGLE (DELTA), L = ARC, R = RADIUS,
R/W = RIGHT OF WAY, A/C = AIR CONDITIONER,
(R) = RADIAL, (NR) = NON-RADIAL, (P) = PLAT,
(M) = MEASURED, (C) CALCULATED, (D) = DEED,
POB = POINT OF BEGINNING, CONG. = CONCRETE,
POC = POINT OF COMMENCEMENT, POL = POINT ON LINE

THIS SURVEY IS CERTIFIED TO AND PREPARED FOR THE SOLE AND EXCLUSIVE BENEFIT OF THE ENTITIES AND/OR INDIVIDUALS LISTED AND SHALL NOT BE RELIED ON BY ANY OTHER ENTITY OR INDIVIDUAL WHOSOEVER. UNDERGROUND FOUNDATIONS AND/OR IMPROVEMENTS WERE NOT LOCATED AS PART OF THIS SURVEY. LAND SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS OF WAY AND/OR EASEMENTS OF PUBLIC RECORD.

ALTAMONTE SURVEYING AND PLATTING, INC.

210 CROWN POINT CIRCLE
SUITE 102 LAKELAND, FL 33779
PHONE: (407) 862-7565
FAX: (407) 862-6229

EXHIBIT
"A"

Blumberg No. 6208