

THIS INSTRUMENT PREPARED BY:
Roy K. Payne
Chief Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32802
(407) 246-2295

CITY OF ORLANDO
PERMITTING SERVICES

OCT 15 2014

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**STREET RIGHT-OF-WAY ENCROACHMENT
AND REMOVAL AGREEMENT**

THIS AGREEMENT, made and entered into this 9th day of October, 2014, by and between **CITY OF ORLANDO**, a Florida municipal corporation, (hereinafter referred to as "CITY"), and **MARK TELLUM** and **SUZANNE TELLUM**, whose address is 1622 Gay Drive, Orlando, Florida, 32803, (hereinafter referred to as the "OWNER").

A RECITALS: **A**

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 1622 Gay Drive, Orlando, Florida, 32803, and more particularly depicted in **Exhibit "A"** attached hereto and incorporated herein by reference (the "OWNER'S PROPERTY"); and

WHEREAS, OWNER has constructed and desires to maintain a short retaining wall ("Retaining Wall") within the street right-of-way of McCamy Street, owned and maintained by the CITY (the "City's Right-of-Way") adjacent to the OWNER'S PROPERTY, all as shown in **Exhibit "A"**, attached hereto and made a part hereof by reference; and

WHEREAS, OWNER has made application for a building permit that has been assigned Building Permit Case Number BLD ENG-2014-01301 for construction of paver driveway, "Project," a condition of which permit is that Owner enter into this Agreement; and

WHEREAS, OWNER desires to initiate construction of the Project and has, therefore, requested that the CITY enter into this Agreement; and

WHEREAS, Section 61.203 of the Orlando City Code requires that the OWNER enter into a binding agreement providing for the encroachment of the Retaining Wall into the City's Right-of-Way and providing for removal of the Retaining Wall under certain conditions; and

WHEREAS, the Retaining Wall 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.

Handwritten signature/initials
10/9/2014

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. Encroachment. The CITY hereby grants permission for the encroachment of the Retaining Wall into the City's Right-of-Way, strictly limited to the area described and shown in **Exhibit A**. The Retaining Wall shall not be expanded in any way, including, though not exclusively, an increase in height or width, without the prior written consent of the CITY.

3. Release. OWNER hereby releases the CITY, its representatives, employees and elected officials from any and all damages, claims, or liability, with respect to the Retaining Wall that may arise due to the CITY's operation and maintenance of the City's Right-of-Way.

4. Priority of City's Right-of Way. The Retaining Wall shall not be operated or maintained in such a manner so as to interfere, in any way, with the CITY'S operation or maintenance of its right-of-way or any public or general utility improvements located thereon.

5. Retaining Wall. In consideration for the CITY'S consent to construction and maintenance of the Retaining Wall within the City's Right-of-Way, as described herein, the OWNER agrees, at its sole cost and expense, to construct, maintain, repair and operate the Retaining Wall Project, consistent with reasonable engineering standards and all applicable laws, codes, and regulations and the terms of this Agreement.

6. No Waiver/No Vesting. 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. This Agreement does not operate to vest any interest or right whatsoever.

7. Insurance. OWNER shall possess and maintain, at all times during the operation and maintenance of the Retaining Wall within the City's Right-of-Way, homeowner's 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 or construction, operation or maintenance of the Retaining Wall. CITY shall be listed as an additional insured on the homeowner's policy and Owner shall provide CITY

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proof of said insurance coverage prior to execution of this Agreement and upon CITY'S request at any time during the term thereof.

8. 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 this Agreement or construction, operation or maintenance of the Retaining Wall.
9. 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.
10. 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. This restriction shall remain in effect until modified by the CITY.
11. 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.
12. 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.

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- 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.
13. 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.
14. Attorney's Fees. OWNER agrees that it shall be liable for reasonable attorney's fees incurred by CITY, if CITY is required to take any actions, through litigation or otherwise, to enforce this Agreement.
15. 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.
16. Termination of License and Removal of Encroachment. The CITY retains the right to revoke this license at any time, by notifying the OWNER in writing at the address listed in the initial paragraph of this Agreement. OWNER shall remove the Retaining Wall and any and all attendant improvements, from the City's Right-of-Way, within thirty (30) days of the date of receipt of the written notice to OWNER. If the OWNER fails to remove the Retaining Wall and attendant encroachments, within the above-described timeframe, the CITY may remove same and charge the cost of removal to the OWNER. Should the OWNER fail to pay the costs of CITY's removal of the Retaining Wall and attendant encroachments within thirty (30) days of the CITY'S request, the CITY may file a lien against the OWNER'S PROPERTY to accrue interest at the statutory rate.
17. License. This Agreement constitutes a License and does not rise to the level of a real property interest in the property underlying the City's Right-of-Way.
18. Effective Date. The effective date of this Agreement is the date of its execution by the last person to execute it.

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

ATTEST:

CITY OF ORLANDO

Alana C. Brenner, City Clerk

Mayor / Mayor Pro Tem

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:

SIGNATURES CONTINUE NEXT PAGE

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TWO WITNESSES:

[Signature]
Print Name: Eric Frisch

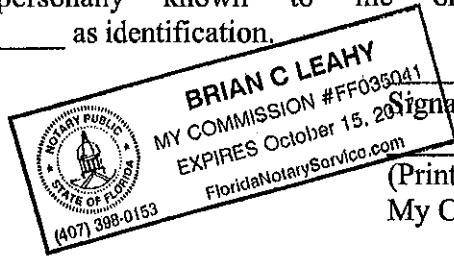
[Signature]
Print Name: Yovssic Mowad

OWNER:
MARK TELLUM

Sign: [Signature]

STATE OF FLORIDA
COUNTY OF ORANGE

^A The foregoing was acknowledged before me this 9 day of Oct, 2014, by Mark Tellum who is personally known to me or who has produced driver's license as identification.



[Signature]
Signature of Notary Public
Brian Leahy
(Print Notary Name)
My Commission Expires: 10/15/17

TWO WITNESSES:

[Signature]
Print Name: Eric Frisch

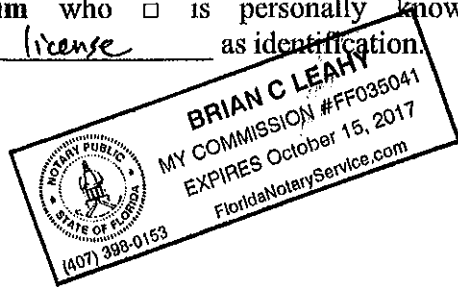
[Signature]
Print Name: Yovssic Mowad

OWNER:
SUZANNE TELLUM

Sign: [Signature]

STATE OF FLORIDA
COUNTY OF ORANGE

^A The foregoing was acknowledged before me this 9 day of Oct, 2014, by Suzanne Tellum who is personally known to me or who has produced driver's license as identification.



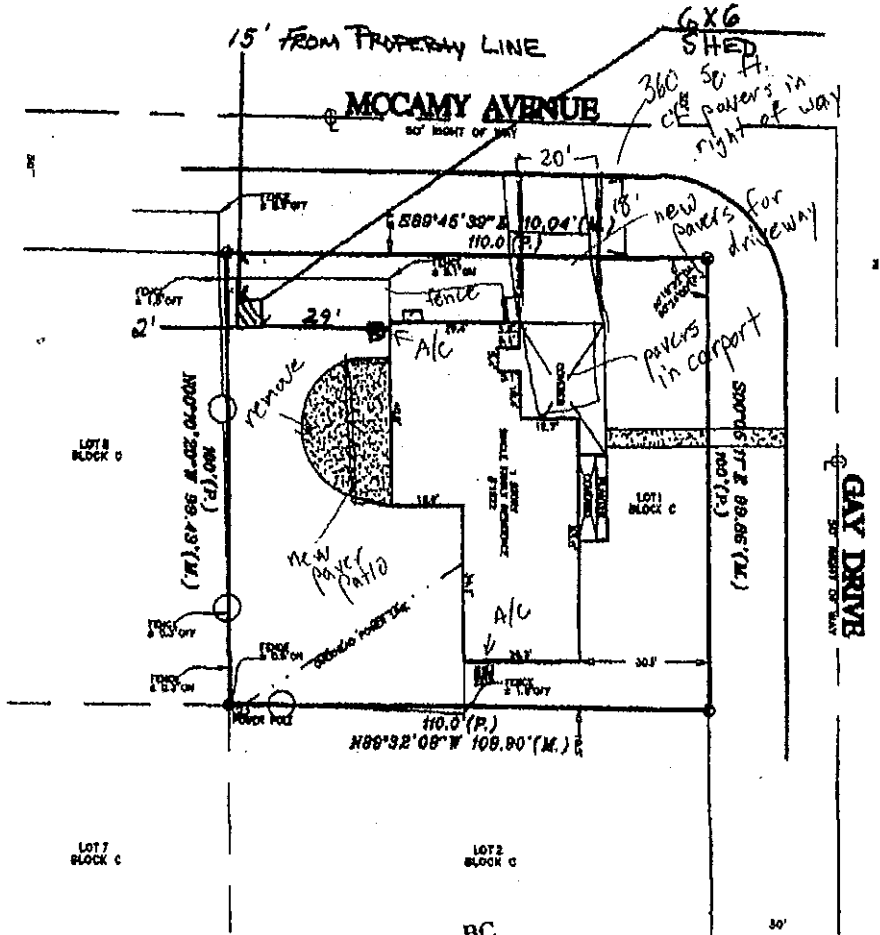
[Signature]
Signature of Notary Public
Brian Leahy
(Print Notary Name)
My Commission Expires: 10/15/17

EXHIBIT "A"

"Exhibit A-1"

BOUNDARY SURVEY FOR MARK & SUZANNE TELLAM

LOT 1, BLOCK "C"
ROWENA PARK
PLAT BOOK 5, PAGE 25,
ORANGE COUNTY, FLORIDA



PRJ2010-0318/
SURVEY



THIS SURVEY CERTIFIED TO:
PROJECT'S TITLE:
CHASE LAMARITON MORTGAGE CORPORATION
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
MARK TELLAM
SUZANNE TELLAM

SURVEYOR NOTES:
1) THESE SURVEYS NOT KNOWN TO THE SURVEYOR AT THE TIME OF THIS SURVEY MAY VIOLATE THE BOUNDARY LINES SHOWN HEREON.
2) SURVEYOR AND FIELD SIZE SHOULD NOT BE USED TO RECONSTRUCT BOUNDARY LINES.

BOUNDARIES ARE BASED ON THE CENTERLINE OF GAY DRIVE AS SHOWN SCOTCH 11'E, ASSUMED LEGAL DESCRIPTION FURNISHED BY CLIENT (UNLESS OTHERWISE NOTED). THIS IS TO CERTIFY THAT I HAVE RECORDED THE FLOOD INSURANCE RATING MAP (FIRM) PANEL #120179 DSSS E DATED 12/18/00 AND DETERMINED THAT THE LARGEST SHOWING HEREON IS IN ZONE "X".

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL SEALED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER. ADDITIONS AND DELETIONS TO SURVEY MAPS, DISTURBANCES OR REVISIONS BY OTHER THAN THE ORIGINAL PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE TELLAM PARTY OR PARTIES.

LEGEND	
●	RECOVERED 4" DIA. CONCRETE MONUMENT NO. 1
▲	RECOVERED NAIL & DISK #
×	RECOVERED X CUT IN CONCRETE
○	RECOVERED 1/2" IRON ROD #
⊙	RECOVERED 1-1/2" BRN PIPE NO. 1
⊖	RECOVERED 3/8" IRON ROD NO. 1
⊕	SET 1/2" IRON ROD #18 5300
⊗	POWER POLE AS SHOWN
⊘	WOOD FENCE AS SHOWN
⊙	CHAIN LINK FENCE AS SHOWN
⊚	CONCRETE SLAB AS SHOWN

C = CENTER, HOLE (H.O.D.), L = ARC, R = RADIUS,
 A/W = RIGHT OF WAY, A/C = AIR CONDITIONER,
 (S) = SIGNAL, (M) = NON-PERMANENT, (P) = PLUMB,
 (C) = MEASURED, (C) = CALCULATED, (D) = DIBB,
 P.O.B. = POINT OF BEGINNING, CONAL = CONCRETE,
 P.O.C. = POINT OF COMMENCEMENT, P.O.L. = POINT ON LINE

THIS SURVEY IS CERTIFIED TO AND PREPARED FOR THE SOLE AND EXCLUSIVE BENEFIT OF THE CLIENT'S (AND/OR INDIVIDUALS LISTED) AND SHALL NOT BE FILED ON BY ANY OTHER ENTITY OR INDIVIDUAL WHATSOEVER. UNDERGROUND FOUNDATIONS AND/OR IMPROVEMENTS WERE NOT LOCATED AS PART OF THIS SURVEY. LAND SHOWING HEREON WERE NOT ABSTRACTED FOR RIGHTS OF WAY AND/OR EASEMENTS OF PUBLIC RECORDS.

ALTAMONTE SURVEYING & LAND PLATTING, INC.
 488 DOUGLAS AVE SUITE 200
 ALTAMONTE SPRING, FL 32714
 PHONE: (407) 882-7000
 FAX: (407) 882-6229

"Exhibit A-2"

