

**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

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

THIS AGREEMENT, made and entered into this 23 day of August, 2014, by and between **CITY OF ORLANDO**, a Florida municipal corporation, whose address is 400 S. Orange Ave., Orlando, FL, 32802, (hereinafter referred to as "CITY"), and **ARIEL MURPHY**, whose address is 2638 Homer Circle, Orlando, FL, 32803, (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 2638 Homer Circle, Orlando, Florida 32803 (the "OWNER'S PROPERTY"); and

WHEREAS, OWNER desires to construct and maintain a 6 ft. high fence ("Project") along the south side of OWNER'S PROPERTY. In order to provide the required setback for the trees and existing shed, the fence is to be installed four (4) feet south of the current property boundary thus encroaching into the street right-of-way of Rosedale Drive, owned and maintained by the CITY (the "CITY's Right-of-Way"), all as shown in Exhibit "A", attached hereto and made a part hereof by reference; and

WHEREAS, OWNER has made application for a permit to construct 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 Project into the CITY's Right-of-Way and providing for removal of the Project under certain conditions; and

WHEREAS, the Project 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. Encroachment. The CITY hereby grants permission for the encroachment of the Project into the CITY's Right-of-Way, strictly limited to the area described and shown in **Exhibit "A"**.
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 Project 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 Project 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. Project. In consideration for the CITY's consent to construction and maintenance of the Project 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 Project, consistent with reasonable engineering standards and all applicable laws, codes, and regulations.
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 construction, homeowner's liability insurance covering the Project within the CITY's Right-of-Way, in order to protect the CITY from any covered liability, claims, damages, losses or expenses arising from or out of in any way connected with construction, operation or maintenance of the Project. CITY may request proof of such insurance at any time.
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 any tort, intentional action, negligent act or omission of the OWNER, its

tenants, agents, contractors, subcontractors, or anyone for whose act or acts any of them may be liable, for acts or omissions occurring in that portion of the CITY's Right-of-Way on, under or through which the Project is constructed or resulting from the operation or maintenance of the Project.

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.

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 Project, 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 Project 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 Project 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.

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 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: Kierstin Beritez  
[Signature]  
Print Name: David H. Donovan

OWNER:

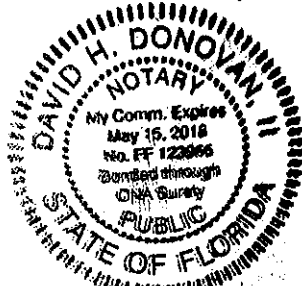
Ariel Murphy

Sign [Signature]

Date: 8/23/14

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing was acknowledged before me this 23 day of August, 2014, by Ariel Murphy, as the owner of 2638 Homer Circle, Orlando, FL, 32803. He/She  is personally known to me or  who has produced Drivers license as identification.



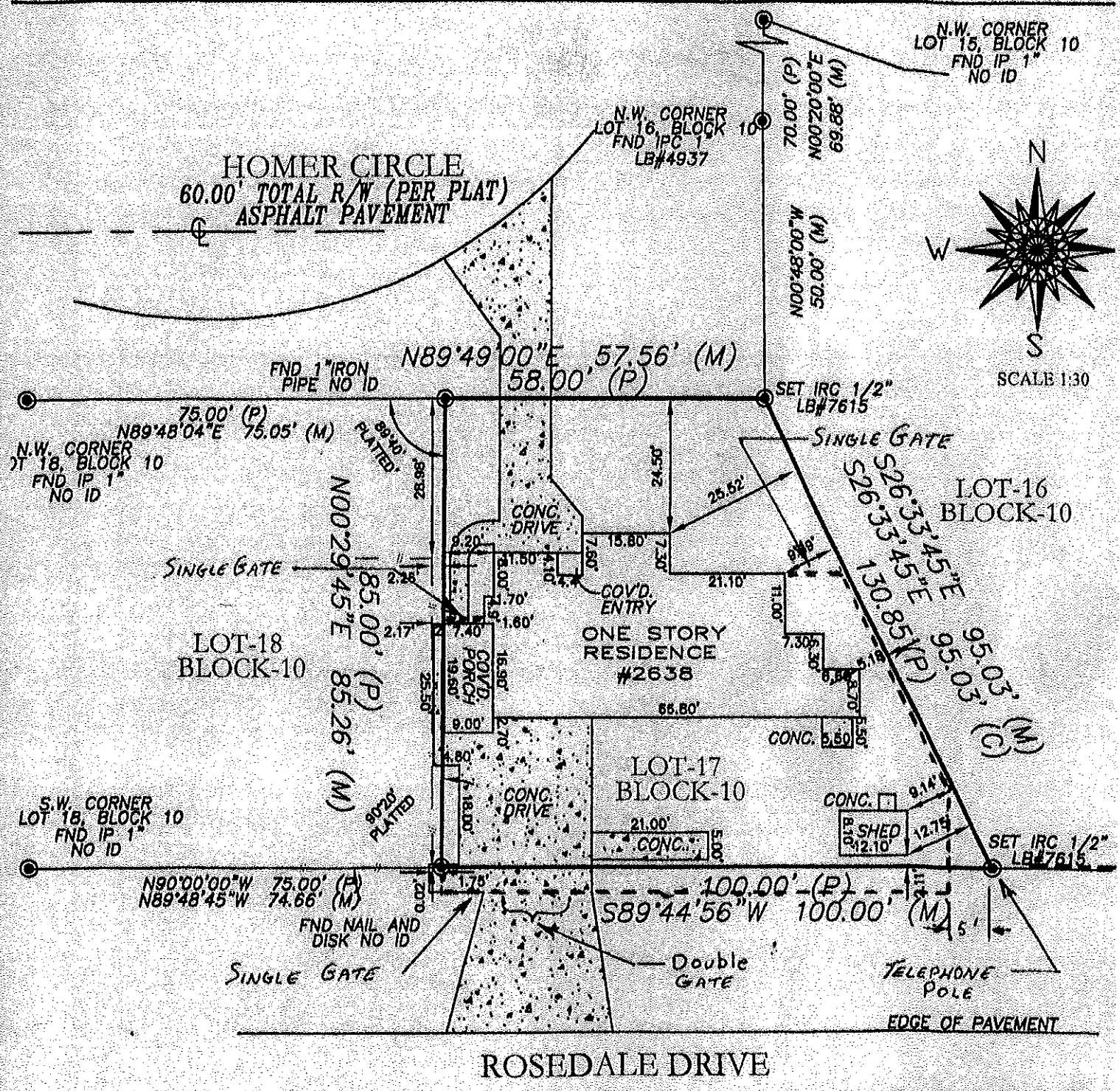
[Signature]  
Signature of Notary Public  
David H. Donovan  
(Print Notary Name)

My Commission Expires: May 15, 2018

Legal Description:  
 17, Block 10, COLONIAL ACRES according to  
 plat thereof as recorded in Plat Book S, Page 45, of  
 public records of Orange County, Florida.

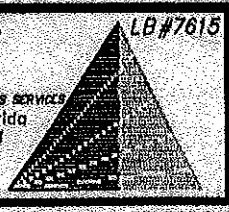
Certified to/ for the exclusive use of:  
 Ariel Murphy  
 Branch Banking and Trust Company  
 City Title Services, LLC  
 Alliant National Title Insurance Company

Flood Insurance Rate Map:  
 Community Number: 120186 Panel: 0265  
 Suffix F Flood Insurance Rate Map  
 Dated September 25, 2009 Flood Zone: " X "



Address: 2638 Homer Cir., Orlando, FL 32803

**LEB/ON GROUP**  
 LAND SURVEYING AND MAPPING CORP.  
 BOUNDARY, HYDROGRAPHY, & TOPOGRAPHY \* CONSTRUCTION SUPPORT \* GPS SERVICES  
 2238 Winter Woods Blvd Suite 1000 Winter Park Florida  
 Phone (407) 781-9329 Fax (407) 517-4393  
 Website WWW.LEBRONGROUP.COM  
 Email info@lebrongroup.com



Legend:

	= 6' VINYL FENCE
	= 4' CHAIN LINK FENCE
	= TELEPHONE RAISER
	= WOOD POWER POLE
	= 1/2" I.P. LB 7615
	= WOOD DOCK
	= COVERED AREA
	= CONCRETE

- Surveyor's Notes:
1. Legal Description provided by others.
  2. The lands shown hereon were not abstracted for any other recorded encumbrances not shown on the Plat.
  3. Underground portions of footings, foundations or oil improvements were not located.
  4. Wall ties are to the face of the wall and are not to be used to reconstruct boundary lines.
  5. Only visible encroachments located.
  6. No Identification found on property corners unless shown.