

**THIS INSTRUMENT PREPARED BY:**

Roy K. Payne, Esq.  
Chief Assistant City Attorney  
City of Orlando  
400 S. Orange Avenue  
Orlando, Florida 32801  
(407) 246-2295

**DRAINAGE EASEMENT**  
**ENCROACHMENT AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between **CITY OF ORLANDO**, a Florida municipal corporation, (hereinafter referred to as “CITY”), and **SAMIR GAZALY**, an Individual, whose address is 7925 St. Andrews Circle, Orlando, Florida 32835-8197, (hereinafter referred to as the “OWNER”).

**RECITALS:**

WHEREAS, OWNER is the owner of certain real property located at 7925 St. Andrews Circle, Orlando, Florida 32835-8197, and more particularly depicted in **Exhibit “A”** attached hereto and incorporated herein by reference (the “OWNER’S PROPERTY”); and

WHEREAS, CITY owns a ten (10) foot wide drainage easement, “EASEMENT,” that encumbers the West side of OWNER’S PROPERTY, also as shown in **Exhibit “A”**; and

WHEREAS, a small portion of the house located on OWNER’S PROPERTY as well as portions of the pool screen and other attendant improvements, “ENCROACHMENTS,” are currently located within the EASEMENT, as shown in **Exhibit “A”**; and

WHEREAS, the OWNER hereby acknowledges that the CITY currently operates and maintains drainage infrastructure within the EASEMENT, including at 24 inch stormwater pipe, “Pipe;” and

WHEREAS, the ENCROACHMENTS constitute an encumbrance to OWNER’S title for OWNER’S PROPERTY and therefore OWNER has requested that the CITY enter into an agreement authorizing the ENCROACHMENTS; and

WHEREAS, Section 61.203 of the Orlando City Code requires that the OWNER enter into a binding agreement authorizing the ENCROACHMENTS under the specific limitations of this Agreement; and

WHEREAS, the 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. Encroachment. The CITY hereby grants permission for location of the ENCROACHMENTS as they currently exist into the EASEMENT, strictly limited to the area described and shown in **Exhibit A**, "License Area." The extent of the ENCROACHMENTS and Licensed Area shall not be expanded or modified in any way without written amendment to this Agreement executed by both parties.
3. Release. OWNER hereby releases the CITY, its representatives, employees and elected officials from any and all damages, claims, or liability that may arise under this Agreement, including though not exclusively the CITY's use of the EASEMENT and its operation, maintenance, repair and installation of any infrastructure located within the EASEMENT, including though not exclusively, the Pipe, now or in the future.
4. Priority of Easement. The ENCROACHMENTS shall not be operated or maintained in such a manner so as to interfere, in any way, with the CITY's operation and maintenance of the EASEMENT and any infrastructure located within the EASEMENT, including though not exclusively, the Pipe, now or in the future. OWNER'S interest in the Licensed Area is subordinate to the CITY's interest in the EASEMENT and CITY is not responsible for the repair or replacement of any improvements damaged by CITY's construction, maintenance, repair and operation of the infrastructure located within the EASEMENT, including, though not exclusively, the Pipe.
5. Encroachments. In consideration for the CITY's consent to the location of the ENCROACHMENTS within the EASEMENT as shown in Exhibit "A," the OWNER agrees, at its sole cost and expense, to maintain, operate and repair the ENCROACHMENTS, 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, operation and maintenance of the ENCROACHMENTS, homeowner's insurance to protect the CITY from liability, claims, damages, losses or expenses arising from or out of, and in any way connected with, this Agreement, including though not exclusively, the construction, operation and maintenance of the ENCROACHMENTS and the CITY's construction, installation, operation and maintenance of any infrastructure within the EASEMENT. OWNER shall provide proof said insurance prior to execution of this Agreement and at any time during the term of this Agreement as requested by CITY.
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, including though not exclusively 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 EASEMENT on, under or through which the ENCROACHMENTS are located.
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. The CITY retains the right to revoke this license upon default of the OWNER, by notifying the OWNER in writing at the address listed in the initial paragraph of this Agreement.
  
17. License. This Agreement constitutes a License and does not rise to the level of a real property interest in the EASEMENT.
  
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.

**CITY OF ORLANDO**

Attest:

\_\_\_\_\_  
Mayor / Mayor Pro Tem

\_\_\_\_\_  
Alana C. Brenner, City Clerk

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, 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: \_\_\_\_\_

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

\_\_\_\_\_, 2015.

\_\_\_\_\_  
Chief Assistant City Attorney

TWO WITNESSES:

**OWNER:  
SAMIR GAZALY**

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

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

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

Print Name: Samir Gazaly

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

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by **Samir Gazaly**, as the Owner of 7925 St Andrews Circle, Orlando, Florida 32835, who acknowledged before me that he has executed the foregoing instrument for the purposes therein expressed, and that he was duly authorized to do so.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
(Print Notary Name)

My Commission Expires: \_\_\_\_\_

Commission No.: \_\_\_\_\_

Personally known, or  
Produced Identification

Type of Identification Produced

Drivers License

AFFIX NOTARY STAMP

**EXHIBIT "A"**