

THIS INSTRUMENT PREPARED BY:  
Alison Brackins  
Assistant City Attorney  
City of Orlando  
400 S. Orange Avenue  
Orlando, FL 32801  
(407) 246-2295

**RIGHT-OF-WAY UTILIZATION AGREEMENT  
FOR AUDIO SPEAKERS**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between **Dirk, Bill & Gary IV, Inc.**, a Florida corporation, hereinafter referred to as "OWNER", and the **City of Orlando**, a Florida municipal corporation, hereinafter referred to as "CITY".

**RECITALS:**

WHEREAS, OWNER is the owner of certain real estate located at 33 W. Church Street and within the corporate limits of the City of Orlando, Orange County, State of Florida; and

WHEREAS, OWNER desires to locate two (2) wall mounted speakers within the street right-of-way of W. Church Street (the "Improvement"); and

WHEREAS, the CITY will permit the location of the Improvement within the street right-of-way area pursuant to the terms and conditions set forth herein; and

WHEREAS, OWNER is required to enter into this Agreement in order to allow the Improvement to encroach into the street right-of-way area in compliance with Section 61.203 of the City's Land Development Code; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable considerations each to the other, the parties agree as follows:

1. Preamble Incorporated. The foregoing recitals are true and correct and are incorporated herein as part of this Agreement.

2. Encroachment. The CITY hereby grants permission as described in this Agreement for the encroachment of the Improvement within the right-of-way of W. Church Street as depicted on Exhibit "A", attached hereto and incorporated herein, by reference. The encroachment is for the perpetual use, location, operation, maintenance, and repair of the Improvement within the right-of-way.

3. Reservation of Rights. The CITY reserves the right to utilize the right-of-way for the location, installation, maintenance, and repair of the roadways and any underground utilities located or to be located upon and under the right-of-way, provided that such use shall not interfere with OWNER's right to locate, operate, maintain, and repair the Improvement in the right-of-way granted herein.

4. Existing Utilities. The location, installation, operation, maintenance and repair of the Improvement shall not interfere with any existing utilities located within, upon or under the right-of-way.

5. Maintenance and Repair. OWNER shall notify the CITY in writing prior to performing any

maintenance or repair to the Improvement located within the right-of-way. OWNER shall obtain approval of the CITY if the repair or maintenance of the Improvement requires any portion of W. Church Street to be closed to pedestrian or vehicular traffic. Upon the repair, or maintenance of the Improvement, OWNER shall restore the right-of-way to its prior condition. All costs for the operation, repair, and maintenance of the Improvement and for the restoration of the right-of-way shall be paid by OWNER, except that OWNER shall not be responsible for any damage to the Improvement or right-of-way caused by the City's negligent repair or maintenance of W. Church Street.

6. Indemnification. 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 Owner, its agents or subcontractors or anyone for whose act or acts any of them may be liable, for actions or omissions occurring in that portion of the street right-of-way area on which the Improvement is located.

7. Recording. OWNER will record this Agreement, at its expense, in the Public Records of Orange County, Florida, where it shall be a covenant running with the land and encumber the property hereinabove described.

8. 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. OWNER shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations pertaining to the installation, operation, maintenance, and repair of the Improvement in the right-of-way.

9. Entire Agreement. 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.

10. Severability. 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.

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

12. 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 either OWNER represents and warrants that he has sought such independent legal advice and counsel or has knowingly and voluntarily waived such right.

OWNER

Dirk, Bill & Gary IV, Inc.

By: [Signature]

Print Name: GARY NOLEN

Title: MANAGING PARTNER

WITNESSES:

(1) Sign Name: [Signature]

Print Name: NICHOLAS DEB

(2) Sign Name: [Signature]

Print Name: SRICKNER

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this 11th day of June, 2015, by Gary Nolen, as Managing Partner of Dirk, Bill & Gary IV, Inc., on behalf of the company. He/she is personally known to me or has produced FLDL# (type of identification) as identification.

N450-281-64-335-0

[Signature]  
Notary Public: Marcia Ross

My Commission Expires: May 15, 2018



13. Attorney's Fees. OWNER agrees that he 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.

14. 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 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.

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

**CITY OF ORLANDO**

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

ATTEST:

\_\_\_\_\_  
Celeste Brown, City Clerk

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, and Celeste Brown, to me known as the 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.

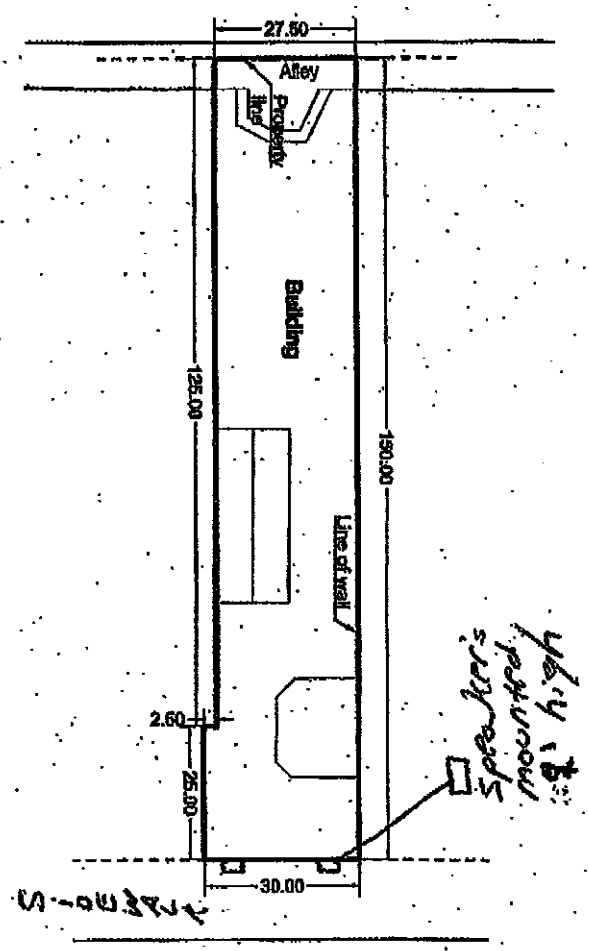
\_\_\_\_\_  
Notary Public: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

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

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

\_\_\_\_\_  
Assistant City Attorney  
Orlando, Florida

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30 W Church St  
 Columbus, MS 39201  
 601-972-1122

EXHIBIT

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