

THIS INSTRUMENT PREPARED BY:

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STREET RIGHT-OF-WAY ENCROACHMENT
AND
REMOVAL AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 20____, by and between **CITY OF ORLANDO**, a Florida municipal corporation, (hereinafter referred to as "CITY"), and **CHARLES L. WINELAND** and **SUSAN D. WINELAND**, husband and wife, whose mailing address is 1280 Bahama Drive, Orlando, Florida 32806, (hereinafter collectively referred to as "OWNER").

RECITALS:

WHEREAS, ~~the OWNER desires to install and maintain a 6' wood fence ("Project")~~ within the street right-of-way of Fern Creek Ave. owned and maintained by the CITY (the "CITY'S Right-of-Way") as shown in **Exhibit "A"**, attached hereto and made a part hereof by reference; and

WHEREAS, the OWNER desires use of the CITY'S Right-of-Way as depicted in **"Exhibit A"** and have, therefore, requested that the CITY enter into this Agreement; and

WHEREAS, Section 61.230 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.

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"**. The OWNER acknowledges that the CITY'S Right-of-Way

cannot be included in any calculations for setback requirements under City Code or otherwise.

3. Release. The ASSOCIATION 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. No permanent improvements shall be constructed in the CITY'S Right-of-Way.
5. Project. In consideration for the CITY'S consent to use 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 install, 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 remains~~ subject to all applicable laws, rules, codes and regulations. This Agreement does not operate to vest any interest or right whatsoever.
7. Insurance. The OWNER shall possess and maintain, at all times during construction, operation and maintenance of the Project within the City's Right-of-Way, general liability insurance in an amount sufficient to protect the CITY from any covered liability, claims, damages, losses or expenses arising from or out of or in any way connected with construction, operation or maintenance of the Project or the swale within the City's Right of Way. CITY shall be named as an additional insured on the liability policy and CITY may request proof of such insurance at any time.
8. Contingency. This Agreement is contingent upon the Project having been completed consistent with the permits and any applicable laws, rules or regulations.
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, their 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 CITY'S Right-of-Way on, under or through which the Project is installed or resulting from the operation or maintenance of the Project.

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.
11. Recording. The OWNER will record this Agreement, at its expense, in the Public Records of Orange County, Florida. This restriction shall remain in effect until modified by the CITY.
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. The OWNER acknowledges that it has had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement, and that the OWNER represents and warrants that it has sought such independent legal advice and counsel.
15. Attorney's Fees. The 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.

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 of License and Removal of Encroachment. The CITY retains the right to immediately revoke this license at any time, by notifying the OWNER in writing at the address listed in the initial paragraph of this Agreement. The OWNER shall remove the Project, and any and all improvements, from the CITY'S Right-of-Way, within thirty (30) days of the date of the written notice to the OWNER. If the OWNER fails to remove the Project from the CITY'S Right-of-Way 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 improvements and attendant encroachments within thirty (30) days of the CITY'S request, the CITY may file a lien against the OWNER to accrue interest at the statutory rate and enforced as prescribed by law.
18. 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.
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.

CITY OF ORLANDO

Attest:

Mayor / Mayor Pro Tem

Amy T. Iennaco, City Clerk

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

_____, 20__.

Assistant City Attorney

SIGNED IN THE PRESENCE OF
TWO WITNESSES:

OWNER:

Print Name: _____

CHARLES L. WINELAND

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by
CHARLES L. WINELAND who ☐ is personally known to me or ☐ who has produced
_____ as identification.

NOTARY PUBLIC

My Commission Expires _____

SIGNED IN THE PRESENCE OF
TWO WITNESSES:

OWNER:

Print Name: _____

SUSAN D. WINELAND

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by
SUSAN D. WINELAND who ☐ is personally known to me or ☐ who has produced
_____ as identification.

NOTARY PUBLIC
My Commission Expires _____

6" STANDARD CURB

PR
WO

N 00°02'50" E 82.00'

30'
(PLAT)

SEWER
CLEANOUT

23.0'
TO FACE OF CURB

NEIGHBOR FENCE IMPROVED
DURING PERMITTED HOME
REBUILDING

RECOVERED 3/8" IRON ROD
CAP ILLEGIBLE

6' WOOD PRIVACY FENCE
TO BE REPLACED

SCREENED ENCLOSURE

SCREENED POOL &
POOL DECK
(NOT DETAILED)

6FT CONCRETE
BLOCK PRIVACY WALL

TO BE REPLACED
4' WOOD SCREENING
FENCE

POOL & SPA
EQUIPMENT

A/C
UNIT

1 STORY CONCRETE BLOCK
SINGLE FAMILY RESIDENCE

N 89°55'15" W 110.00'

S 89°55'15" E 110.00'

"A"

RECOVERED 3/8" IRON ROD
NO ID

30.6' TIE

LOT
5

65.70'

CONCRETE
SIDEWALK

CONCRETE DRIVEWAY

S 00°02'50" W 82.00'

7.6' TIE

SPEED

BAHAMA

DRIVE

& GUTTER

Ⓛ DRAINAGE
MANHOLE