

THIS INSTRUMENT PREPARED BY:

Alison Brackins, Esq.
Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801
(407) 246-2295

ENCROACHMENT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2016, by and between **CITY OF ORLANDO**, a Florida municipal corporation, (hereinafter referred to as "CITY"), and **JEFFREY K. MURPHY** and **TRACY L. MURPHY**, husband and wife, whose address is 1407 Lancaster Drive, Orlando, Florida 32806, (hereinafter referred to as "OWNERS").

RECITALS:

WHEREAS, OWNERS are the owners of certain real property located within the limits of un-incorporated Orange County, State of Florida, located at 1407 Lancaster Drive, Orlando, Florida 32806, and more particularly described as:

LOT 10 & THE WEST 45 FEET OF LOT 9, BLOCK A, LANCASTER PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK O, PAGE 133, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

(the "OWNERS' Property"); and

WHEREAS, the CITY is the owner of certain real property located within the corporate limits of the City of Orlando, Orange County, State of Florida, located at Lancaster Drive, Orlando, Florida 32806, and more particularly described as:

PARK PER PLAT LYING NORTHERLY, EASTERLY & WESTERLY OF LANCASTER DRIVE AND NORTH OF LOT 21, BLOCK A, AND NORTH OF LOT 1, BLOCK J, LANCASTER PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK O, PAGE 133, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

(the "CITY'S Property"); and

WHEREAS, OWNERS purchased OWNERS' Property October 10, 2003, which included an existing seawall that straddles the property line that bounds the OWNERS' Property on the north and the property line that bounds the CITY'S Property on the south; and

WHEREAS, OWNERS desire to construct a dock that will straddle the property line that bounds the OWNERS' Property on the north and the property line that bounds the CITY'S Property on the south; and

WHEREAS, OWNERS seawall encroaches, and the dock will encroach, into the CITY'S Property adjacent to the OWNERS' Property, as shown in **Exhibit "A"**, attached hereto and made a part hereof by reference; and

WHEREAS, OWNERS desire to enter into a binding agreement providing for the encroachment of the seawall and the dock into the CITY'S Property; and

WHEREAS, the seawall and the dock 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 OWNERS' 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 seawall and the dock into the CITY'S Property, strictly limited to the area described and shown in **Exhibit "A"**. The OWNERS acknowledge that the CITY'S Property cannot be included in any calculations for setback requirements under City Code or otherwise.
3. Release. OWNERS hereby release the CITY, its representatives, employees and elected officials from any and all damages, claims, or liability, with respect to the seawall and the dock that may arise due to the CITY's operation and maintenance of the CITY'S Property.
4. Priority of City's Property. The seawall and the dock shall not be altered or maintained in such a manner so as to interfere, in any way, with the CITY'S operation or maintenance of its property or any public or general improvements located thereon. No temporary or permanent improvements shall be constructed on the CITY'S Property.
5. Seawall and Dock. In consideration for the CITY'S consent to use and maintain the seawall and the dock within the CITY'S Property, as described herein, the OWNERS agree, at their sole cost and expense, to install, maintain, repair and operate the seawall and the dock, 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 OWNERS' 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. OWNERS shall possess and maintain, at all times during construction, operation and maintenance of the seawall and/or the dock within the CITY'S Property, general homeowner's 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 seawall and/or the dock or within the CITY'S Property. 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 seawall and the dock having been completed consistent with the permits and any applicable laws, rules or regulations.
9. Indemnification. The OWNERS agree that they 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 OWNERS, 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 Property on, under or through which the seawall and/or the dock are constructed or resulting from the operation or maintenance of the seawall and/or the dock.
10. Representatives Bound Hereby. This Agreement shall be recorded and shall be binding upon the successors, heirs, executors, administrators, representatives, or assigns of the OWNERS, and upon all persons acquiring an interest thereunder and shall be a restrictive covenant running with the OWNERS' Property.
11. Recording. The OWNER will record this Agreement, at their expense, in the Public Records of Orange County, Florida, where it shall encumber the OWNERS' Property. 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. OWNERS acknowledge that they have had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement, and that OWNERS represent and warrant that it has sought such independent legal advice and counsel.

15. Attorney's Fees. OWNERS agree that they 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 OWNERS in writing at the address listed in the initial paragraph of this Agreement. OWNERS shall remove the seawall and/or the dock, and any and all improvements, from the CITY'S Property, within thirty (30) days of the date of the written notice to OWNERS. If the OWNERS fail to remove the seawall and/or the dock from the CITY'S Property 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 with thirty (30) days of the CITY'S request, the CITY may file a lien against the OWNERS' Property 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 Property.
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, Interim City Clerk

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

June 6, 2016.
Min Burt
Assistant City Attorney

[SIGNATURES CONTINUE NEXT PAGE]

SIGNED IN THE PRESENCE OF
TWO WITNESSES:

x [Signature]
Print Name: ROBERTO A. GONZALEZ
[Signature]
Print Name: STEPHEN F. BROOME

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 5 day of APRIL, 2016, by
Jeffrey K. Murphy who ☒ is personally known to me or ☐ who has produced
as identification.



STEPHEN F. BROOME
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF192689
Expires 2/24/2019

OWNER:

Jeffrey K. Murphy

Sign: [Signature]
Print Name: Jeff Murphy

SIGNED IN THE PRESENCE OF
TWO WITNESSES:

[Signature]
Print Name: ROBERTO A. GONZALEZ
[Signature]
Print Name: STEPHEN F. BROOME

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 5 day of APRIL, 2016,
by Tracy L. Murphy who ☒ is personally known to me or ☐ who has produced
as identification.



STEPHEN F. BROOME
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF192689
Expires 2/24/2019

OWNER:

Tracy L. Murphy

Sign: [Signature]
Print Name: TRACY MURPHY

LEGAL DESCRIPTION: THE WEST 45.00 FEET OF LOT 9 AND ALL OF LOT 10, BLOCK 'A', LANCASTER PARK ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK O, PAGE 133, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

* Affected area -

