

THIS INSTRUMENT PREPARED BY:

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Assistant City Attorney
City of Orlando
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Orlando, Florida 32801
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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 **GREGORY A. BROWN**, an unmarried man and **MICHELLE E. BROWN**, an unmarried woman, whose mailing address is 1330 Golfview Street, Orlando, Florida 32804, (hereinafter collectively referred to as "OWNER").

RECITALS:

WHEREAS, the OWNER desires to install and maintain a 6 ft. fence ("Project") within the street right-of-way of Edgewater Court 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 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. 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 with 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: _____

GREGORY A. BROWN

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by
GREGORY A. BROWN, 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: _____

MICHELLE E. BROWN

Print Name: _____

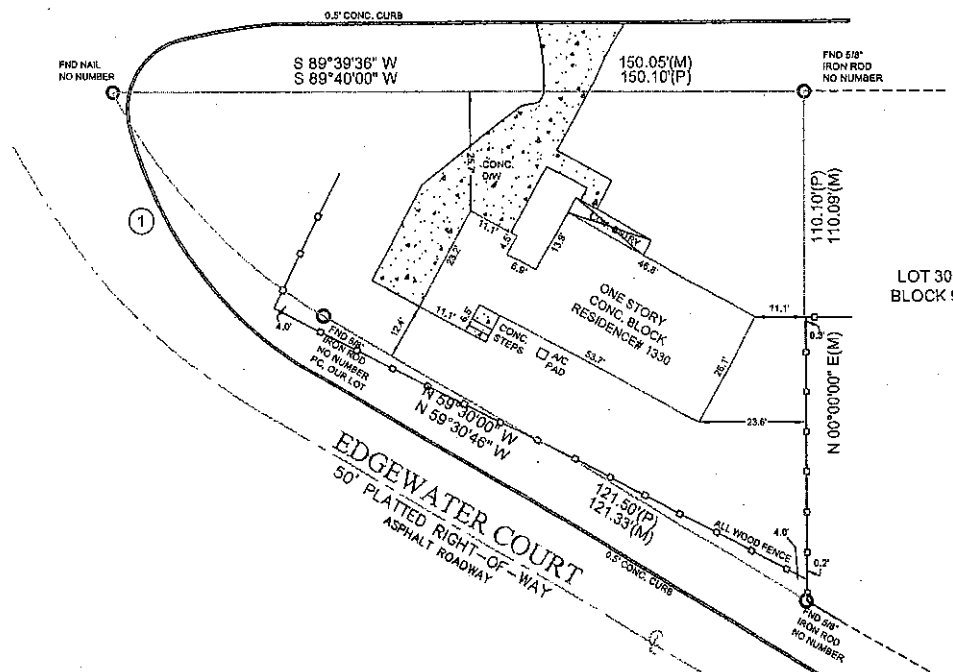
STATE OF FLORIDA
COUNTY OF ORANGE

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

NOTARY PUBLIC
My Commission Expires _____

Boundary Survey

GOLFVIEW AVENUE
50' PLATTED RIGHT-OF-WAY
ASPHALT ROADWAY



①
Δ=31°41'00"(P)
L=66.59'(C)
R=120.50'(P)
CB=N43°40'04"W(C)
C=65.80'(P)
CB=N43°40'50"W(M)
C=65.88'(M)

1" = 30'
GRAPHIC SCALE
0 15 30

ADDRESS
1330 GOLFVIEW STREET
ORLANDO, FLORIDA 32804

LEGAL DESCRIPTION: (AS FURNISHED)

LOT 1, BLOCK A, OF EDGEWATER, ACCORDING TO THE PLAT THEREOF,
AS RECORDED IN PLAT BOOK R, PAGE(S) 92, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

BASIS OF BEARINGS: BEARINGS SHOWN HEREON ARE BASED ON THE EAST PROPERTY LINE OF LOT 1, BLOCK A ASSUMED AS BEING N00°00'00"E.

LIST OF POSSIBLE ENCROACHMENTS: NO ENCROACHMENTS FOUND

SURVEYOR INFORMATION:

FIRST AMERICAN
First American
Professional Land Services

FIRST AMERICAN
First American
Title Insurance Company

KELLER WILLIAMS
at the Parks Realty

SeeMyNewHome!

SURVEYOR FILE NUMBER: 09-06-0412

The Certified Registered Professional Land Surveyor hereby certifies that the survey and survey data are true and correct.

CERTIFIED TO: (AS FURNISHED)

First American Title Insurance Company
Element Funding
Gregory A. Brown and Michelle E. Brown

NOTES

1. UNDERGROUND UTILITY RELOCATION, UNDERGROUND IMPROVEMENTS, FOUNDATIONS AND/OR OTHER UNDERGROUND STRUCTURES HEREIN LOCATED BY THIS SURVEY.
2. THE PURPOSE OF THIS SURVEY IS FOR USE IN OBTAINING TITLE INSURANCE AND FINANCING AND SHOULD NOT BE USED FOR CONSTRUCTION PURPOSES.

THIS SURVEY IS PREPARED FOR THE EXCLUSIVE USE AND BENEFIT OF THE PARTIES LISTED HEREON. LIABILITY TO THIRD PARTIES MAY NOT BE TRANSFERRED OR ASSIGNED.

LEGEND
AC: AIR CONDITIONER
BLDG: BUILDING
C: CALCULATED
CB: CHORD BEARING
CONC: CONCRETE BLOCK WALL
C: CENTERLINE
CNA: CORNER NOT ACCESSIBLE
CONC: CONCRETE
COV: COVERED
CLS: CONCRETE SLAB
D: DESCRIPTION
DWD: DRIVEWAY
M: MEASURED
OVL: OVERHEAD UTILITY LINE
P: PLATTED
P.C: POINT OF CURVATURE
P.O.B: POINT OF BEGINNING
P.O.D: POINT OF COMMENCEMENT
P.P: POWER POLE
P.R.C: POINT OF REVERSE CURVATURE
P.R.M: PERMANENT REFERENCE MONUMENT
RWC: RIGHT OF WAY
S.W: SIDEWALK
CLF: CHAIN LINK FENCE
W: WOOD FENCE

FLOOD ZONE
(FOR INFORMATIONAL PURPOSES ONLY)
SUBJECT PROPERTY SHOWN HEREON APPEARS TO BE LOCATED IN FLOOD ZONE "X", AREA OF MINIMAL FLOODING, PER FIRM. FIRM NUMBER 13082-0338, LAST REVISION DATE 10/08/00. THIS SURVEYOR MAKES NO GUARANTEE AS TO THE ACCURACY OF THIS ABOVE INFORMATION. THE LOCAL F.E.M.A. AGENT SHOULD BE CONTACTED FOR VERIFICATION.

RESIDENTIAL LAND SERVICES
FOR ALL INQUIRIES CONTACT:
RLS
rlsinfo@firstam.com
(408) 376-6000
Form 6.7

SURVEYOR'S CERTIFICATE

I hereby certify that the survey represented hereon meets the minimum technical standards for land surveys in Florida. As set forth in Chapter 616 17-6, Florida administrative code, pursuant to Chapter 472.022, Florida statutes.

BILLY R. DAVIS JR.
STATE OF FLORIDA
DATED: 06/28/09
SURVEYOR'S NAME: BILLY R. DAVIS JR., PSM #5099
FOR THE FIRM: LB# 7556

NOT VALID WITHOUT AN AUTHENTICATED ELECTRONIC SIGNATURE AND AUTHENTICATED ELECTRONIC SEAL

DATE REVISION DATE REVISION

Reviewed & Accepted by:

Date

Date

EXHIBIT

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"A"