

**THIS INSTRUMENT PREPARED BY:**

Roy K. Payne, Esq.  
Chief Assistant City Attorney  
City of Orlando  
400 S. Orange Avenue  
Orlando, Florida 32801  
(407) 246-3495

**ENCROACHMENT AGREEMENT**

THIS ENCROACHMENT AGREEMENT, "Agreement", made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between **CITY OF ORLANDO**, a Florida municipal corporation, whose address is 400 S. Orange Avenue, Orlando, FL, 32802, (hereinafter referred to as "CITY"), and **LAJ INVESTMENTS GROUP, LLC**, a Florida Limited Liability Company, whose mailing address is 7203 Wild Blackberry Trail, Winter Garden, FL, 34787, (hereinafter referred to as "OWNER").

**RECITALS:**

WHEREAS, OWNER is the owner of certain real property located within the corporate limits of the City of Orlando, Florida, located at 621 Morocco Avenue, Orlando, Florida 32807, and more particularly described as:

**LOT 6, BLOCK D, ROCKLEDGE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK W, PAGE 54, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.**

(the "OWNER'S Property"); and

WHEREAS, a single story residence, "Residence", is located on OWNER'S Property, which currently encroaches 2+/- feet into the 10 ft. platted Utility Easement that bounds the OWNER'S Property along the south property line; and

WHEREAS, OWNER desires to maintain that portion of the Residence that encroaches, "Encroachment", into the Easement; and

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 continued location of the Encroachment in the Easement, strictly limited to the area of the Encroachment described and shown in **Exhibit "A"**.

3. Release. OWNER hereby releases the CITY, its representatives, employees and elected officials from any and all damages, claims, or liability, with respect to the Residence that may arise due to the CITY's use of the Easement or operation and maintenance of infrastructure within the Easement.
4. Priority of City's Property. Neither the Residence nor the Encroachment shall be altered or maintained in such a manner so as to interfere, in any way, with the CITY's operation or maintenance of the Easement or any public or general improvements located thereon.
5. Maintenance. In consideration for the CITY's consent to locate the Encroachment within the Easement, as described herein, the OWNER agrees, at its sole cost and expense, to install, maintain, repair and operate the Encroachment, 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 construction, operation and maintenance of the Encroachment, general homeowner's liability insurance to protect the CITY from any liability, claims, damages, losses or expenses arising from or out of or in any way connected with construction, operation or maintenance of the Encroachment within the Easement. 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 Residence having been completed consistent with the permits and any applicable laws, rules or regulations. Furthermore, OWNER acknowledges that nothing in this Agreement impacts the rights of other utility providers that may be located in the Utility Easement now or in the future.
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 construction, operation and maintenance of the Encroachment or Residence.
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 and shall be a restrictive covenant running with the OWNER's Property.

11. 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.
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. 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.
15. 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.
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. Upon the default by OWNER under the terms of this Agreement, the CITY retains the right to immediately revoke this License by notifying the OWNER in writing at the address listed in the initial paragraph of this Agreement. OWNER shall remove the Encroachment, and any and all improvements, from the Easement within thirty (30) days of the date of the written notice to OWNER. If the OWNER fails to remove the single family residence from the Easement 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's 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 Easement.
  
- 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.

ATTEST:

**CITY OF ORLANDO, FLORIDA**, a  
municipal corporation, organized and existing  
under the laws of the State of Florida

By:

\_\_\_\_\_  
Amy T. Iennaco, Interim City Clerk

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

Mayor / Mayor Pro Tem

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by \_\_\_\_\_, Mayor / Pro Tem and \_\_\_\_\_, Interim City Clerk, who is personally known to me who did (did not) take an oath.

\_\_\_\_\_  
Name  
Notary Public  
Serial Number: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

SIGNED IN THE PRESENCE OF  
TWO WITNESSES:

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

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

**OWNER: (Corporate Seal)**

**LAJ Investments Group, LLC**, a Florida  
Limited Liability Company

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

Sign: \_\_\_\_\_

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

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016,  
by \_\_\_\_\_, as \_\_\_\_\_ of **LAJ Investments Group,  
LLC**, who  is personally known to me or  who has produced  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires \_\_\_\_\_

**EXHIBIT "A"**