

**THIS INSTRUMENT PREPARED BY:**

Roy K. Payne, Esq.  
Chief 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 14<sup>th</sup> day of March, 2018, by and between **CITY OF ORLANDO**, a Florida municipal corporation, (hereinafter referred to as "CITY"), and **R.E. DOWDY #5, LLC**, a Florida Limited Liability Company, whose mailing address is 7209 International Drive, Orlando, Florida 32819, (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 6304 International Drive, Orlando, Florida 32819, and more particularly described as:

**LOTS 1 AND 2, FLORIDA CENTER INTERNATIONAL DRIVE  
COMMON AREA NO. 7, ACCORDING TO THE PLAT THEREOF AS  
RECORDED IN PLAT BOOK 8, PAGE 129, PUBLIC RECORDS OF  
ORANGE COUNTY, FLORIDA.**

(the "OWNER'S Property"); and

WHEREAS, OWNER purchased OWNER'S Property October 6, 1999, which included a 10 ft. Drainage Easement that bounds the OWNER'S Property along the east property line; and

WHEREAS, OWNER desires to install walk-in cooler that encroaches into the 10 ft. Drainage Easement that bounds the OWNER'S Property along the east property line; and

WHEREAS, OWNER'S walk-in cooler will encroach into the 10 ft. Drainage Easement, as shown in **Exhibit "A"**, attached hereto and made a part hereof by reference; and

WHEREAS, OWNER desires to enter into a binding agreement providing for the encroachment of the walk-in cooler into the 10 ft. Drainage Easement; and

WHEREAS, the walk-in cooler 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 OWNER'S 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 walk-in cooler into the 10 ft. Drainage Easement, strictly limited to the area described and shown in **Exhibit "A"**. The OWNER acknowledges that the 10 ft. Drainage Easement cannot be included in any calculations for setback requirements under City Code or otherwise.
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 walk-in cooler that may arise due to the CITY's operation and maintenance of the 10 ft. Drainage Easement.
4. Priority of City's Property. The walk-in cooler 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 10 ft. Drainage Easement.
5. Walk-In Cooler. In consideration for the CITY'S consent to use and maintain the walk-in cooler within the 10 ft. Drainage Easement, as described herein, the OWNER agrees, at its sole cost and expense, to install, maintain, repair and operate the walk-in cooler 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 walk-in cooler within the 10 ft. Drainage Easement, 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 walk-in cooler or within the 10 ft. Drainage 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 walk-in cooler 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, its 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 10 ft. Drainage Easement on, under or through which the walk-in cooler is constructed or resulting from the operation or maintenance of the walk-in cooler.
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. 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. OWNER shall remove the walk-in cooler, and any and all improvements, from the 10 ft Drainage Easement within thirty (30) days of the date of the written notice to OWNER. If the OWNER fails to remove the walk-in cooler from the 10 ft. Drainage 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 within 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 property underlying the 10 ft. Drainage 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.

**CITY OF ORLANDO**

Attest:

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

\_\_\_\_\_  
Denise Aldridge, City Clerk

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

\_\_\_\_\_, 2018

\_\_\_\_\_  
Assistant City Attorney

[SIGNATURES CONTINUE NEXT PAGE]

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SIGNED IN THE PRESENCE OF  
TWO WITNESSES:

Veronica M. Russo  
Print Name: VERONICA M. RUSSO

Ronald Dowdy, Jr.  
Print Name: Ronald Dowdy, Jr.

OWNER:

**R.E. DOWDY #5, LLC, a Florida Limited  
Liability Company**

By:

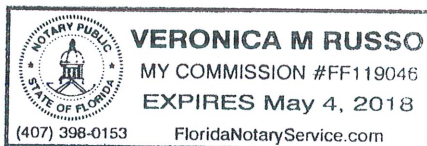
Sign: Ronald E Dowdy Sr

Print Name: RONALD E Dowdy Sr

Title: MANAGING Member

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of APRIL, 2017, by RONALD E. DOWDY, SR., as MANAGING MEMBER of R.E. Dowdy #5, LLC, who ☒ is personally known to me or ☐ who has produced \_\_\_\_\_ as identification.



Veronica M. Russo  
NOTARY PUBLIC  
My Commission Expires 5/4/2018

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