

THIS INSTRUMENT PREPARED BY:

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RIGHT-OF-WAY ENCROACHMENT AND REMOVAL AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2020, by and between **CITY OF ORLANDO**, a Florida municipal corporation, whose mailing address is 400 South Orange Avenue, Orlando, FL, 32802, (hereinafter referred to as “CITY”), and **EDGEWATER HOLDING CORPORATION.**, a Florida corporation, whose address is 1523 Anchor Ct., Orlando, FL 32804-2822, (hereinafter referred to as the “OWNER”).

RECITALS:

WHEREAS, OWNER is the OWNER of certain real property located within the corporate limits of the City of Orlando, Florida, located at 1401 Edgewater Drive, Orlando, FL 32804, and more particularly depicted in **Exhibit “A”** attached hereto and incorporated herein by reference (the “OWNER’S PROPERTY”); and

WHEREAS, OWNER’S PROPERTY is currently developed with an office building and attendant parking lot; and

WHEREAS, a portion of the office building, “Building,” extends into the right-of-way for Edgewater Drive, “Right-of-Way,” as shown in **Exhibit “B;”** and

WHEREAS, the portions of the Building that encroach into the Right-of-Way are hereinafter referred to as “Encroachments;” and

WHEREAS, OWNER has requested that the CITY authorize OWNER’s continued use of the Right-of-Way in the manner shown in Exhibit “B”; and

WHEREAS, Section 61.230 of the Orlando City Code requires that the OWNER enter into a binding agreement providing for continued maintenance of the Encroachments in the Right-of-Way and providing for removal of the Encroachments under certain conditions.

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, "License," for the maintenance of the Encroachments in the Right-of-Way, strictly limited to the area described and shown in Exhibit "B". This Agreement strictly prohibits any expansion of the Encroachments into the Right-of-Way and/or the construction of any additional improvements in the Right-of-Way.
3. Release. OWNER hereby releases the CITY, its representatives, employees and elected officials from any and all damages, claims, or liability, that may arise due to the CITY's operation and maintenance of the Right-of-Way.
4. Priority of City's Right-of Way. This License is subordinate to the CITY's Right-of-Way and OWNER shall not, under the terms of this License, interfere with the CITY'S operation and maintenance of the Right-of-Way, any other CITY right-of-way or any public or general utility improvements located thereon.
5. Encroachments. In consideration for the CITY's grant of this License, the OWNER agrees, at its sole cost and expense, to maintain, repair, operate and remove the Encroachments, consistent with the terms of this Agreement, reasonable engineering standards and all applicable laws, codes, regulations and permits. OWNER hereby assumes any and all responsibility and liability with respect to, or arising from, or in any way associated with this License or the Encroachments. OWNER shall be responsible for the repair of any damage to the Right-of-Way or any improvements located within the Right-of-Way, caused by the operation or maintenance of the Encroachments. CITY may, in its sole discretion, direct OWNER as to the required maintenance or remedial activities and a time period for completion. OWNER shall be obligated to conduct such activities within the time period designated in the notice. If OWNER fails to complete said maintenance or remedial activities within the designated timeframe, the CITY may do so and charge the cost to the OWNER. Should the OWNER fail to pay the CITY's costs within thirty (30) days after the CITY's written request, the CITY may file a lien against the OWNER's Property to accrue interest at the statutory rate.
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 in the Right-of-Way.
7. Insurance. OWNER shall possess and maintain, at all times during the term of this License, a general liability insurance policy in the amount of at least One Million

Dollars, in order to protect the CITY from liability, claims, damages, losses or expenses arising from or out of in any way connected with this License. The policy shall contain a contractual liability endorsement in favor of the CITY and shall name CITY, its officers, agents, elected and appointed officials and employees as additional insureds. Said insurance shall also be primary, and not contributory, as to any insurance coverage maintained by OWNER and shall provide that CITY receives thirty (30) days notice prior to cancellation or amendment. Any cancellation or amendment to any such insurance policy or policies shall, constitute a default by OWNER under the terms of this Agreement. OWNER shall provide to the CITY proof of such insurance coverage, prior to the CITY's execution of this License. Nothing in this Agreement operates as a waiver of the CITY'S grant of sovereign immunity or the limits of liability established under Florida law and nothing in this Agreement operates to allow a claim otherwise barred by sovereign immunity or other operation of law. This provision shall survive termination of this Agreement.

8. Indemnification. The OWNER agrees that it shall release, indemnify, hold harmless and defend the CITY, its representatives, employees and elected and appointed officials from and against any and all liability, claims, damages, loss and expenses of any sort (including reasonable attorney's fees and costs including appeals), arising out of or resulting in any way from this License, except to the extent that said liability, claims, damages, loss and expenses arise or result from the negligent acts or intentional misconduct of the CITY. Nothing in this Agreement operates as a waiver of the CITY's grant of sovereign immunity or the limits of liability established under Florida law and nothing in this Agreement operates to allow a claim otherwise barred by sovereign immunity or other operation of law. This provision shall survive termination of this Agreement.
9. 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.
10. 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.
11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. Termination of License and Removal of Encroachment. This Agreement may be terminated by agreement of the parties or upon the default of either party. Within thirty (30) days after notice of said termination, OWNER shall remove the Encroachments from the Right-of-Way and restore said Right-of-Way to a level, graded condition. If the OWNER fails to remove the Encroachments, 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 CITY's costs 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. IN ADDITION, THIS AGREEMENT TERMINATES UPON THE CITY'S ISSUANCE OF A DEMOLITION PERMIT FOR THE PROPERTY OR IF THE PROPERTY IS OTHERWISE REDEVELOPED. EITHER PARTY MAY FILE A NOTICE IN THE OFFICIAL RECORDS OF ORANGE COUNTY, FLORIDA CONFIRMING SAID TERMINATION.

- 17. License. This Agreement constitutes a License and does not rise to the level of a real property interest in the property underlying the Right-of-Way.
- 18. 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.

WITNESSES:

OWNER:

Edgewater Holding Corporation

Print Name: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 20____, by _____, as _____ of **Edgewater Holding Corporation**, who is personally known to me or who has produced _____ as identification.

NOTARY PUBLIC
My Commission Expires _____

EXHIBIT "A"

EXHIBIT "B"