

THIS INSTRUMENT PREPARED BY:

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City of Orlando
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STREET RIGHT-OF-WAY ENCROACHMENT
AND
REMOVAL AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2021, by and between **CITY OF ORLANDO**, a Florida municipal corporation, (hereinafter referred to as "CITY"), and _____, a Florida limited liability company, (hereinafter referred to as "OWNER").

RECITALS:

WHEREAS, the OWNER desires to utilize and maintain a parklet("Project") within the street right-of-way of _____, 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 the nonexclusive use of the CITY'S Right-of-Way as depicted in "**Exhibit A**" and has, therefore, requested that the CITY enter into this Agreement; and

WHEREAS, Section 61.203 of the Orlando City Code and the parklet program approved by City Council on or about July 19, 2021 ("Parklet Program"), requires that the OWNER enter into a binding agreement providing for the encroachment and utilization 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 the Parklet Program 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. The OWNER shall, along with any other approved licensee, utilize the Project on a nonexclusive basis.
3. Hours of Operation and Alcohol Service.
 - a. The hours of operation of the Project are limited to 8 A.M. until 12 A.M unless modified by the CITY in a written notice to the OWNER.
 - b. The Project, where alcoholic beverages is offered for sale or is otherwise provided to guests or customers, must conform to the following additional regulations:
 - i. The principal use eating and drinking establishment to which the Project is associated must be properly permitted by all applicable government agencies to dispense alcoholic beverages for consumption on premises. All government permits that authorize the dispensation of alcoholic beverages must reflect the Project area as part of the licensed premises.
 - ii. During all business hours of the Project, a conspicuous sign must be posted within the Project area that effectively notifies patrons that section 33.10 of the Code of the City of Orlando prohibits the removal of open containers of alcoholic beverages from the licensed premises. The sign shall be installed by the CITY. In the event that the sign is damaged or removed, the OWNER shall inform the CITY within 48 hours of said damage or removal.
4. Release. The OWNER hereby releases the CITY and the City of Orlando CRA, their 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.
5. 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 and no modifications to the Project or any decking or planters, as constructed by the City of Orlando CRA, located within the Project shall be permitted.

6. Project. In consideration of the CITY'S consent to use of the Project within the CITY'S Right-of-Way, as described herein, the OWNER agrees, at its sole cost and expense, to operate the Project, consistent with reasonable engineering standards and all applicable laws, codes, and regulations. OWNER shall maintain the Project in accordance with standards reasonably established by CITY, and shall conduct such other normal janitorial, maintenance and repair work as may be necessary and desirable to maintain the Project in a first-class condition. In the event that any portion of the Project is damaged and may pose a danger to persons or property, or repairs are required to avoid suspension of any necessary service to the CITY'S Right-of-Way, the OWNER will inform the CITY of said damage as promptly as possible and shall cease use of the Project until such damage is remedied.
7. 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.
8. 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 not less than \$1,000,000.00 bodily injury and property damage as to any one occurrence with a two million and 00/100 Dollars (\$2,000,000.00) aggregate. The CITY and the City of Orlando CRA must be listed as additional insureds. The policy must be written so that the City will be notified at least 30 days before termination or decrease in coverage. Prior to the utilization of the Project, the certificate of insurance must be delivered to the Executive Director, City of Orlando DDB/CRA, Economic Development Department, Orlando City Hall, 400 S. Orange Ave, Orlando, FL 32801.
9. Contingency. This Agreement is contingent upon the Project having been completed consistent with the permits and any applicable laws, rules or regulations, including but not limited to any rules or regulations governing the CITY's parklet program.
10. Indemnification. The OWNER agrees that it shall indemnify, hold harmless and defend the CITY and the City of Orlando CRA, their 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 invitees, 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.

11. Representatives Bound Hereby. This Agreement shall be binding upon the successors, heirs, executors, administrators, representatives, or assigns of the OWNER, and upon all persons acquiring an interest thereunder.
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. In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.
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 cease operation within the CITY's Right-of-Way and remove any and all OWNER-installed improvements and OWNER-placed furniture from the CITY'S Right-of-Way, within 48 hours of the date of the written notice to the OWNER. If the OWNER fails to remove any and all OWNER-installed improvements and furniture 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 within fifteen (15) 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

By: _____
Richard M. Howard, P.E.
Public Works Director

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

_____, 2021

Assistant City Attorney

SIGNED IN THE PRESENCE OF
TWO WITNESSES:

**OWNER: _____, a Florida limited
liability company**

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ____ day of _____, 2021, by _____ as manager of _____, a Florida limited liability company, and acknowledged before me that he/she had the authority to and did execute the same.

NOTARY PUBLIC
My Commission Expires _____

EXHIBIT "A"
(Site Plan)