



ENCROACHMENT AGREEMENT

THIS IS AN ENCROACHMENT AGREEMENT between the **CITY OF SARASOTA**, a Florida municipal corporation, hereinafter referred to as "**CITY**", and **The School Board of Sarasota County**, the owner of the minor encroachment described herein, hereinafter referred to as "**ENCROACHER**."

WITNESSETH:

WHEREAS, ENCROACHER is the owner of real property known as **Bay Haven School** located at **2901 W Tamiami Circle**, Sarasota, Florida; and,

WHEREAS, the above described real property is adjacent to public right-of-way within the City known as **Bon Air Avenue and Tennessee Drive**; and,

WHEREAS, on April 1, 2002, the City Commission of the City of Sarasota adopted Ordinance No. 02-4347 providing regulations applicable to the execution of Encroachment Agreements to allow the placement of privately owned improvements within the public right-of-way subject to specified conditions under appropriate circumstances; and,

WHEREAS, Ordinance No. 02-4347 (Section VII-1201, City Zoning Code) authorizes the City Manager to execute an Encroachment Agreement on behalf of the **CITY** to permit a "minor encroachment" as defined in the ordinance upon the recommendation of the City Engineer and the Director of Public Works; and,

WHEREAS, on April 7, 2003, the City Manager delegated the authority to execute a "Minor" Encroachment Agreement to the City Engineer.

WHEREAS, the City Engineer has found that the **4-foot chain link fence with gates and covered walk** related to the real property known as **Bay Haven School** will encroach upon the public right-of-way; and,

WHEREAS, ENCROACHER has requested permission of the City Manager to allow the above described encroachment to encroach into the public right-of-way; and,

WHEREAS, the City Engineer and the Director of Public Works have recommended the execution of this Encroachment Agreement to allow the minor encroachment more fully described herein.

NOW, THEREFORE, it is agreed between the parties as follows:

1. **GRANT OF PERMISSION:** **CITY** hereby grants unto **ENCROACHER** permission to utilize a

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portion of the public right-of-way known as **Bon Air Avenue and Tennessee Drive** located adjacent to the real property known as **Bay Haven School** for the purpose of allowing the **4-foot chain link fence with gates and covered walk** encroachment to remain, subject to all the terms and conditions of this Encroachment Agreement. Said **4-foot chain link fence with gates and covered walk** encroachment is described in Exhibit "A" and pictorially in Exhibit "B", attached hereto and made a part hereof by reference.

2. **TERM:** In the event the **STATE, COUNTY, CITY, or PULBIC UTILITES** hereinafter referred to as "**CITY**" requires access to the public right-of-way to maintain public utilities or public improvements, **CITY** reserves the right to replace the easement area to the City's adopted construction standards established in the EDCM, including but not limited to walkways, and plantings. If time permits, **CITY** shall give **ENCROACHER** thirty (30) days' notice thereof of required work providing time to remove the **4-foot chain link fence with gates and/or the covered walk and all appurtenances thereto** on **ENCROACHER** property for **ENCROACHER** to reuse, **CITY** restoration work will be done to EDCM standards prior to turning over to **ENCROACHER**. If permittable and the **ENCROACHER** desires to keep the improvements within the easement area **ENCROACHER** covenants to obtain a right-of-way use permit to restore the **4-foot chain link fence with gates and covered walk and all appurtenances thereto** to the approved plans on file. This Encroachment Agreement shall be effective upon the date it is executed by both parties hereto and recorded in the County Clerk of Courts, and shall automatically terminate as provided for in Paragraphs 8 and 9 hereof.

3. **SPECIAL COVENANTS:** **ENCROACHER** specifically covenants to:
 - a. Be solely responsible for the maintenance, repair, and replacement of the **4-foot chain link fence with gates and covered walk** encroachment located adjacent to the real property known as **The School Board of Sarasota County**, encroaching into the public right-of-way of **Bon Air Avenue and Tennessee Drive**, including maintaining the **4-foot chain link fence with gates and covered walk** encroachment in a neat and clean condition.

 - b. Be solely and exclusively responsible for assuring that there shall be no further or additional encroachments into the public right-of-way from the real property known as **The School Board of Sarasota County** unless same is approved by a written amendment to this Agreement or by another Encroachment Agreement.

 - c. Be solely and exclusively responsible for repairing any damage caused by **said** encroachments as determined by the City Engineer such as but not limited to curb, sidewalk, pavement, or public utilities.

 - d. In the event any portion or portions of the existing encroachment into the public right-of-way are destroyed by fire, hurricane, tornado, any other act of God or any other means, **ENCROACHER** specifically covenants not to build, construct, rebuild or reconstruct anything which encroaches into the public right-of-way unless same is approved by a written amendment to this Agreement or by another Encroachment Agreement.

 - e. At all times during the term of this agreement the **CITY** shall have the ability, in its sole and

absolute discretion, to remove the encroachment should same be necessary in order to access public utilities whether above or below ground. **ENCROACHER** shall be required to coordinate and pay the cost of any utility relocation made necessary by the encroachment.

4. **HOLD HARMLESS:** **CITY** and **ENCROACHER** hereby agree that **CITY** shall not be liable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by any person whatsoever who may be using, occupying or present at the public right-of-way of **Bon Air Avenue and Tennessee Drive** adjacent to **Bay Haven School** whether such loss, injury, death or damage shall be caused by or shall in any manner result from, or arise out of any act, omission or negligence of **ENCROACHER** or any other person. **ENCROACHER** hereby covenants and agrees to indemnify and hold harmless **CITY** during the term of this Encroachment Agreement from any and all claims, losses, liabilities, injuries, death or damages whatsoever arising out of the existence of the minor encroachment allowed by **CITY** under the terms of this Agreement.

5. **FUTURE IMPROVEMENTS:** **CITY** and **ENCROACHER** agree that no future improvements to the encroachment shall be constructed in the public right-of-way known as **Bon Air Avenue and Tennessee Drive**. However, this prohibition shall not apply to any necessary minor repairs to the **4-foot chain link fence with gates and covered walk** encroachment **and all appurtenances thereto**, except as agreed to in Paragraph 3 d. above. **CITY** and **ENCROACHER** agree that no future maintenance to the encroachment will require a Right-Of-Way Use Permits **and all appurtenances thereto**, as long as there are no impacts to the general public. If the general public is impacted a Right-Of-Way Use Permit will be required along with associated plans and fees.

6. **TRANSFERABILITY:** This Agreement shall run with the land and is not personal to **ENCROACHER** so that subsequent owners of the Real Property may retain the encroachment permitted by the terms of this Agreement in accordance with the terms hereof. Consequently, all subsequent owners of the Real Property are fully responsible for all the obligations of **ENCROACHER** set forth in this Encroachment Agreement.

7. **INSURANCE:** **ENCROACHER**, at its sole expense, shall keep the 4-foot chain link fence with gates and covered walk encroachment insured throughout the entire term of this Encroachment Agreement.

8. **TERMINATION:** In the event that the **CITY** shall determine, in its sole and absolute discretion, that the public right-of-way known as **Bon Air Avenue and Tennessee Drive** located adjacent to the real property known as **Bay Haven School**, upon which the **4-foot chain link fence with gates and covered walk** encroach, is needed by the **CITY** for any purpose whatsoever, then the **CITY** shall have the sole and absolute right to terminate this Encroachment Agreement, upon giving **ENCROACHER** thirty (30) days notice thereof. **ENCROACHER** covenants to remove the **4-foot chain link fence with gates and covered walk** encroachment **and all appurtenances thereto** from the public right-of-way known as **Bon Air Avenue and Tennessee Drive** prior to the effective date of said termination notice. In the event that the subject encroachment remains on the public right-of-way after the termination date, the **CITY** shall

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have the right to remove the encroachment without any liability to **ENCROACHER** or to any other person or entity.

9. **DEFAULT:** Should **ENCROACHER** fail at any time to faithfully perform any of the covenants contained herein, on their part to be kept, **CITY** shall have the right to automatically cancel this Encroachment Agreement and **CITY** shall have the right to immediately remove the **4-foot chain link fence with gates and covered walk** encroachment. Exercise of this right to cancel shall be without liability to the **CITY** or **ENCROACHER** or any other person or entity, which might result from cancellation. Should any claim, demand, suit or action be made or filed against **CITY**, upon cancellation of this Encroachment Agreement, by any person or entity whatsoever, the indemnification provisions of Paragraph 4 above shall be applicable. In the event of such default, **CITY** shall give **ENCROACHER** written notice to the address specified herein, providing for fifteen (15) days in which **ENCROACHER** may remedy said default. If said default is not remedied to the satisfaction of **CITY**, **CITY** shall give **ENCROACHER** written notice requiring **ENCROACHER** to remove the **4-foot chain link fence with gates and covered walk** encroachment within thirty (30) days from the effective date of said termination. In the event that **ENCROACHER** fails to remove the **4-foot chain link fence with gates and covered walk** encroachment within said time period, the **CITY** may possess and remove the **4-foot chain link fence with gates and covered walk** encroachment from the public right-of-way of **Bon Air Avenue and Tennessee Drive** without any liability to **ENCROACHER** or any other person or entity thereof.

10. **DECISION OF CITY:** **ENCROACHER** acknowledges that **CITY** retains the right to make certain decisions pursuant to the terms of this Encroachment Agreement. These decisions include, but are not limited to determinations made pursuant to Paragraph 8; and determination for default pursuant to Paragraph 9. **ENCROACHER** hereby acknowledges it has no right to appeal any decision of **CITY** with regard to this Encroachment Agreement. **ENCROACHER** hereby covenants that there is no right of appeal and any decision of **CITY** with regard to this Encroachment Agreement shall be final and binding upon both parties.

11. **DISCLAIMER OF JOINT VENTURE:** **CITY** and **ENCROACHER** acknowledge that the parties are not engaging in a joint venture.

12. **ATTORNEY'S FEES:** Should it be necessary for **CITY** to bring any action against **ENCROACHER** to enforce any of the covenants, provisions or conditions of this Encroachment Agreement, **ENCROACHER** agrees to pay all costs attendant thereto, including a reasonable attorney's fee to the attorney representing the **CITY**, and such obligation shall apply to declaratory relief, if necessary, to interpret any of the terms hereof. The obligation of **ENCROACHER** shall include attorney's fees incurred by **CITY** at the trial court or appellate court level of proceedings.

13. **NOTICES:** Any notice given **ENCROACHER** or **CITY** pertaining to the terms and conditions of this Encroachment Agreement shall be addressed to:

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City of Sarasota, Florida

Alexandrea DavisShaw, P.E., P.T.O.E., F, FES
General Manager and City Engineer
1565 1st Street
Sarasota, FL 34236

Encroacher

Bridget Ziegler, Chair
Sarasota County School District
1960 Landings Boulevard
Sarasota FL 34231

IN WITNESS WHEREOF the parties hereto have executed this Encroachment Agreement in duplicate, either of which may serve as the original:

DATED this _____ day of _____, 2018 by the **CITY OF SARASOTA, FLORIDA.**

DATED this _____ day of _____, 2018 by **The School Board of Sarasota County.**

Agreement and terms thereof accepted by:

CITY OF SARASOTA

ENCROACHER

By: _____
Alexandrea DavisShaw, P.E., P.T.O.E, F.FES
General Manager and City Engineer

By: _____
Bridget Ziegler, Chair

Notary Public Date

APPROVED FOR LEGAL CONTENT
Date: March 9, 2018

ATTORNEYS FOR THE SCHOOL BOARD
OF SARASOTA COUNTY, FLORIDA

BY: 
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Sarasota Florida 34236