

RESOLUTION No. 23-206

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING A RIGHT-OF-WAY ENCROACHMENT AGREEMENT BETWEEN THE CITY OF DORAL AND B9 NW 97 AVENUE OWNER LLC, THE OWNER OF IMPROVED PROPERTY LOCATED AT 6450 AND 6550 NW 97 AVENUE, TO ALLOW THE EXISTING RETAINING WALL SITUATED AT OR NEAR 66TH STREET, TO REMAIN PARTIALLY WITHIN THE CITY'S RIGHT-OF-WAY; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, B9 NW 97 Avenue Owner LLC ("B9") is the owner of certain real property within the City of Doral ("City"), located at 6450 and 6550 NW 97 Avenue, and more particularly described as:

Parcel 1: track 49 in section 17, township 53 south, range 40 east, of the Florida Fruit Lands Company Subdivision No. 1

Parcel 2: track 50, in section 17, township 53 south, range 40 east, of Florida Fruit Lands Company Subdivision No. 1

("B9 Property"); and

WHEREAS, B9's Property is located adjacent to a certain City right-of-way known as 66th Street, and more particularly described as:

The external area formed by a 25.00 foot radius arc concave to the southwest, tangent to the south line of the north 35.00 feet of the SE $\frac{1}{4}$ of said section 17, township 53 south, range 40 east, of Florida Fruit Lands Company's subdivision No. 1, according to the plat thereof as recorded in official record book 10192 at Page 1844 of the Public Records of Miami-Dade County, Florida.

The external area formed by a 25.00 foot radius arc concave to the southeast, tangent to the south line of the north 35.00 feet of the SE $\frac{1}{4}$ of said section 17, and tangent to the east line of the west 35.00 feet of said tract 49, section 17, township 53 south, range 40 east, of Florida Fruit Lands Company's subdivision No. 1, according to the plat thereof as recorded in plat book 2, Page 17, of the Public Records of Miami-Dade County, Florida as recorded in official record book 32702 at Page 3016 of the Public Records of Miami-Dade County, Florida. ("City Right-of-Way"); and

("City Right-of-Way"); and

WHEREAS, B9 installed a retaining wall minimally encroaching upon the City's Right-of-Way and desires to maintain that portion of the retaining wall that encroaches into the City Right-of-Way ("Encroachment" or "Encroachment Area") as more particularly described in the Right-of-Way Encroachment Agreement in substantially the form attached hereto as Exhibit "A"; and

WHEREAS, the Public Works Director or designee has analyzed the subject Encroachment, and has determined that the Encroachment, and entering into the Right-of-Way Encroachment Agreement, is not contrary to the public interest, based upon the continued existence of safe and sufficient passing distance for pedestrians and users of the City Right-of-Way, and other pertinent criteria; and

WHEREAS, the Mayor and City Council find that approval of the Right-of-Way Encroachment Agreement in substantially the form attached hereto as Exhibit "A" is in the best interest of the City.

NOW, THEREFORE BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL AS FOLLOWS:

Section 1. Recitals. The above recitals are confirmed, adopted, and incorporated herein and made part hereof by this reference.

Section 2. Approval. The Right-of-Way Encroachment Agreement between the City of Doral and B9 NW 97 Avenue Owner LLC, in substantially the form attached hereto as Exhibit "A", is hereby approved.

Section 3. Authorization. The City Manager is authorized to execute the Right-of-Way Encroachment Agreement between the City of Doral and B9 NW 97 Avenue Owner LLC, in substantially the form attached hereto as Exhibit "A", on behalf of the City.

Section 4. Implementation. The City Manager and the City Attorney are hereby authorized to take such further action as may be necessary to implement the purpose and the provisions of this Resolution.

Section 5. Effective Date. The Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Vice Mayor Puig-Corve who moved its adoption.

The motion was seconded by Councilmember Cabral and upon being put to a vote, the vote was as follows:

Mayor Christi Fraga	Yes
Vice Mayor Oscar Puig-Corve	Yes
Councilwoman Digna Cabral	Yes
Councilman Rafael Pineyro	Yes
Councilwoman Maureen Porras	Yes

PASSED AND ADOPTED this 6 day of December, 2023.



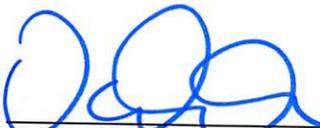
CHRISTI FRAGA, MAYOR

ATTEST:



CONNIE DIAZ, MMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



VALERIE VICENTE, ESQ. for
NABORS, GIBLIN & NICKERSON, P.A.
CITY ATTORNEY

EXHIBIT “A”

THIS INSTRUMENT PREPARED BY:
Valerie Vicente, Esq.
for Nabors Giblin & Nickerson, P.A.
City Attorney
City of Doral
8401 NW 53rd Terrace
Doral, FL 33166
(305) 593-6600

RIGHT-OF-WAY ENCROACHMENT AGREEMENT

THIS RIGHT-OF-WAY ENCROACHMENT AGREEMENT (“Agreement”) made and entered into this _____ day of December 2023 (“Effective Date”), by and between **CITY OF DORAL**, a Florida municipal corporation, whose address is 8401 NW 53rd Terrace, Doral, Florida (“**CITY**”), and **B9 NW 97 Avenue Owner LLC** a for profit corporation, incorporated in the State of Florida, certified by the Florida Division of Corporations/Secretary of State to perform work in the state of Florida, whose address is 345 Park Avenue, New York, NY 10154 (“**B9**”).

RECITALS:

WHEREAS, **B9** is the owner of certain real property located within the corporate limits of the City of Doral, Florida, located at 6450 and 6550 NW 97 Avenue, and more particularly described as:

Parcel 1: track 49 in section 17, township 53 south, range 40 east, of the Florida Fruit Lands Company Subdivision No. 1

Parcel 2: track 50, in section 17, township 53 south, range 40 east, of Florida Fruit Lands Company Subdivision No. 1

(“**B9 Property**”); and

WHEREAS, **B9**’s Property is located adjacent to a certain **CITY** right-of-way known as 66th Street, and more particularly described as:

The external area formed by a 25.00 foot radius arc concave to the southwest, tangent to the south line of the north 35.00 feet of the SE ¼ of said section 17, township 53 south, range 40 east, of Florida Fruit Lands Company’s subdivision No. 1, according to the plat thereof as recorded in official record book 10192 at Page 1844 of the Public Records of Miami-Dade County, Florida.

The external area formed by a 25.00 foot radius arc concave to the southeast, tangent to the south line of the north 35.00 feet of the SE ¼ of said section 17, and tangent to the east line of the west 35.00 feet of said tract 49, section 17, township 53 south, range 40 east, of Florida Fruit Lands Company’s subdivision No. 1, according to the plat thereof as recorded in plat book 2, Page 17, of the Public Records of Miami-Dade County, Florida as recorded

in official record book 32702 at Page 3016 of the Public Records of Miami-Dade County, Florida. (“City Right-of-Way”); and

WHEREAS, B9 installed a retaining wall encroaching upon the City’s Right-of-Way (the “Improvements”), and desires to maintain that portion of the retaining wall that encroaches into the City Right-of-Way (“Encroachment” or “Encroachment Area”) as depicted in the attached Exhibit "A"; 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 B9 permission for the continued location of the Improvements into the City Right-of-Way strictly limited to the area of the Encroachment Area described and shown in Exhibit “A”.
3. B9’s Obligations.
 - A. B9 shall design and construct an extension of a 12” water main to the west property line of NW 99th Avenue within ninety (90) days of the Effective Date of this Agreement.
 - B. B9 shall effectuate any and all repairs to the street lighting from 97th Avenue to 102nd Avenue along NW 66th Street within ninety (90) days of the Effective Date of this Agreement. Thereafter, B9 shall have no responsibility related to the operability or maintenance of said street lighting.
 - C. In the event any road surface is disturbed or damaged by B9 or its contractors in performing B9’s obligations in subsections (3)(A) and (3)(B), B9 shall be responsible for resurfacing the entirety of the roadway. It is expressly understood and agreed to by B9 that patch repairs to the roadway will not satisfy the roadway repair obligations set forth herein.
4. Authority to Withhold Permits and Inspections. In the event of a failure to comply with the terms of this Agreement after its Effective Date, the City may, in addition to any other remedies available, withhold any existing or further permits and refuse to make any inspections or grant any approvals, until such time as the failure to comply is cured.
5. Reservation of Rights. CITY hereby reserves all rights to ownership in and to the City Right-of-Way which are not inconsistent with the Agreement, including limitation: (a) the right to grant non-exclusive easements on, over/or across, the Encroachment Area, (b) the right to use the Encroachment Area for all uses not interfering or inconsistent with the uses permitted herein.
6. Release and Indemnification. B9 hereby releases the CITY, its elected officials, officers, representatives, directors, employees, successors and assigns from any and all damages, claims, or liability, that may arise due to B9’s Improvements in the City Right-of-Way, or operation and maintenance of the Improvements within the City Right-of-Way. B9 further hereby agrees to jointly and severally indemnify, defend, and hold harmless the CITY (and all of its elected officials, officers, representatives, directors, employees,

- successors and assigns) from and against any and all liabilities, damages, claims, costs or expensed whatsoever (including all reasonable attorneys' fees and costs whether suit be brought or any appeals be taken there from) arising from, growing out of or connecting in any way with the Improvements in the City Right-of-Way (including those related to the width of the City Right-of-Way), or operation and maintenance of the Improvements within the City Right-of-Way, including the failure to maintain the Improvements.
7. Priority of City's Property. The Improvements 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 the City Right-of-Way, the general public's use of the City Right-of-Way, or any public or general improvements located thereon.
 8. Maintenance and Repair. B9 shall perpetually maintain the Improvements at its sole cost and expense, in good condition, including general maintenance and repair, during the term of this Agreement.
 9. No Waiver/No Vesting. This Agreement does not constitute a waiver of the CITY's regulatory authority and B9's Property remains subject to all applicable laws, rules, codes and regulations. This Agreement does not operate to vest any interest or right whatsoever.
 10. Contingency. This Agreement is contingent upon B9's project having been completed consistent with the permits and any applicable laws, rules or regulations. Furthermore, B9 acknowledges that nothing in this Agreement impacts the rights of other utility providers that may be located in the City Right-of-Way now or in the future.
 11. Representatives Bound Hereby. This Agreement shall be recorded and shall be binding upon the successors, heirs, executors, administrators, representatives, or assigns of the B9, and upon all persons acquiring an interest thereunder and shall be a restrictive covenant running with the B9's Property.
 12. Recording. B9 will record this Agreement, at its expense, in the Public Records of Miami-Dade County, Florida, where it shall encumber B9's Property. This restriction shall remain in effect until modified by the CITY.
 13. 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 Miami-Dade 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.
 14. Severability. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as such authority determines, and the remainder of this Agreement shall be construed in full force and effect.
 15. Legal Counsel. B9 acknowledges that it has had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement, and that B9 represents

- and warrants that it has sought such independent legal advice and counsel.
16. Attorney's Fees. B9 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.
 17. Election of Remedies. All rights, remedies, and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies, or privileges.
 18. 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.
 19. Termination of License and Removal of Encroachment. Upon default by B9 under the terms of this Agreement, the CITY retains the right to immediately revoke this License by notifying B9 in writing at the address listed in the initial paragraph of this Agreement. B9 shall remove the Encroachment, and any and all Improvements, from the City Right-of-Way within thirty (30) days of the date of the written notice to B9. If the B9 fails to remove the Improvements from the City Right-of-Way within the above-described timeframe, the CITY may remove same and charge the cost of removal to B9. Should B9 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 B9's Property to accrue interest at the statutory rate and enforced as prescribed by law.
 20. This Agreement is to run with the land and shall be binding on all parties and persons claiming under it for a period of thirty (30) years from the date this Agreement is recorded, after which time it shall be extended automatically for successive periods of ten (10) years each unless an instrument signed by the then-owner or a majority of the then-owners, as applicable, of B9's Property has been recorded agreeing to change the Agreement, in whole or in part, provided that the Agreement has been first modified or released by the CITY as provided in Paragraph 21 herein.
 21. Amendments. The Agreement shall be perpetual in duration and shall not be changed, altered or amended except by instrument in writing executed by B9, provided that the same is also approved by the CITY's City Council after public hearing. No modification or amendment of this Agreement shall be effective unless in writing and recorded in the Public Records of Miami-Dade County, Florida.
 22. Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and arrangements, both oral and written, between the parties with respect thereto.
 23. 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 written below.

CITY:

ATTEST:

CITY OF DORAL, FLORIDA

A Florida municipal corporation

City Clerk

By: _____

Print name: _____

Title: _____

WITNESSES:

This _____ day of December, 2023

Signature

Print Name

Approved as to form and legal sufficiency by
City Attorney: _____

Signature

Print Name

EXHIBIT A

Legal Description:

The external area formed by a 25.00 foot radius arc concave to the southwest, tangent to the south line of the north 35.00 feet of the SE ¼ of said section 17, township 53 south, range 40 east, of Florida Fruit Lands Company's subdivision No. 1, according to the plat thereof as recorded in official record book 10192 at Page 1844 of the Public Records of Miami-Dade County, Florida.

The external area formed by a 25.00 foot radius arc concave to the southeast, tangent to the south line of the north 35.00 feet of the SE ¼ of said section 17, and tangent to the east line of the west 35.00 feet of said tract 49, section 17, township 53 south, range 40 east, of Florida Fruit Lands Company's subdivision No. 1, according to the plat thereof as recorded in plat book 2, Page 17, of the Public Records of Miami-Dade County, Florida as recorded in official record book 32702 at Page 3016 of the Public Records of Miami-Dade County, Florida. ("City Right-of-Way")

