AGREEMENT AND CONSENT TO ENCROACH INTO AN UNEXCAVATED PLATTED WATERWAY RIGHT-OF-WAY

THIS AGREEMENT AND CONSENT TO ENCROACH INTO AN UNEXCAVATED PLATTED WATERWAY RIGHT-OF-WAY ("Agreement"), is entered into by and between _____ ("Owner(s)"), whose mailing address is/are _____ and the City of Cape Coral, a Florida Municipal Corporation ("City"), whose mailing address is P.O. Box 150027, Cape Coral, Florida 33915-0027.

The legal description of the property that abuts the unexcavated platted waterway right-of-way affected by this Agreement is:

Lot(s):
Block:
Subdivision:
Unit/Section/Addition etc:
Plat Book:____ Page(s)_____

In consideration of the premises and the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The unexcavated platted waterway right-of-way ("UPROW") referenced in this Agreement and shown on the attached Exhibit "A" is:
   UPROW:_____

2. The City allows only the following item(s) to be placed in the UPROW, subject to the terms herein. They are as follows:
   Encroachment 1:_____
   Encroachment 2:_____

The above encroachments in the UPROW shall not interfere with any drainage and/or utility facilities constructed within the UPROW.

The Owner(s) will be prohibited from installing any buildings, pools or any structure that requires a foundation with a footer within the UPROW.

3. The site plan showing any existing and proposed encroachment(s) into the UPROW is attached as Exhibit "B" and is hereby made a part of this Agreement. This occupation of UPROW does not include any future encroachments other than what is stated in this Agreement.

4. The City agrees that so long as the encroachment(s) of the Owner(s) remain in present form, the City shall allow the Owner(s) to have the encroachment(s) occupy the UPROW to the same extent and in the same manner as denoted on Exhibit "B", except

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as provided herein. Any future revisions will be considered as a new request and subject to a new agreement.

5. The privilege granted by the City to the Owner(s) is made with the express condition that neither the Owner(s) or the Owner(s) heirs, successors, assigns or any person claiming under or through them shall acquire any right superior to the City's right in such UPROW whether by lapse of time or otherwise.

6. This Agreement shall remain in full force and effect only so long as the present encroachment(s) of the Owner(s) remain in present form, except as provided herein, and that, upon removal, demolition, destruction, or replacement, all rights of the Owner(s) under this Agreement shall cease and this Agreement shall be deemed null and void.

7. The City shall have the right to enter upon the UPROW at any time, without notification to the Owner(s). In the event the City utilizes any portion of the area of the UPROW being occupied, the Owner(s) shall be required to reapply for consent to encroach into the UPROW with the Owner's improvements and enter into a new agreement with the City at the Owner(s) sole expense, except in the event that the City exercises its rights under Section 8 herein.

8. The City, in its sole discretion, may require the removal of any items located or installed in the UPROW to access, maintain, construct, renovate or to expand or enlarge the adjoining bridge and canal right of way, for utility, maintenance, safety, or any other reason. In such instance, the City Manager, or his designee, shall give sixty (60) days written notice to the Owner(s) that this Agreement is canceled, and that the Owner(s) shall have no rights under this Agreement whatsoever. Upon such notice, the Owner(s) shall, within ninety (90) days, remove from the UPROW all items placed in it at the Owner's sole expense. Mailing of such notice by the U.S. Mail to the current Owner(s), as shown in the records of Lee County Property Appraiser or such other address provided to the City, shall constitute prima facie evidence of notice as in accordance with this section.

9. In the event the City damages a seawall or alternative to vertical bulkhead built by the Owner(s) during the course of exercising its rights on, over, or under an UPROW, the City shall repair or replace such seawall or alternative to vertical bulkhead at the City's sole cost and expense. The repair or replacement of any marine improvement, surface improvement, or items other than the seawall or alternative to vertical bulkhead shall not be the responsibility of the City. Owner(s) assumes all liability and responsibility to repair or replace marine improvements, surface improvements, and all items other than the seawall or alternative to vertical bulkhead built on the UPROW.

10. Owner(s) shall be responsible, at Owner's expense, to maintain the UPROW and all items placed in the UPROW in good condition so as to present a healthy, neat, and orderly appearance. Maintenance of the UPROW shall include, but not be limited to, grass mowing and erosion control. The failure to maintain the seawall or alternative

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to vertical bulkhead, marine improvements, surface improvements, or other items placed in the UPROW, shall constitute a default under this Agreement and may be grounds for removal by the City of said items from the UPROW at Owner's sole expense.

11. In consideration for Owner(s) use of the UPROW, Owner(s) agree to indemnify, defend, and hold harmless the City from any and all claim of liability by Owner(s) or third parties, demands, causes of action, liability, loss, damage, and/or injury to property or persons, arising from or occasioned by the use of the UPROW, and further agree to be responsible for any costs incurred in defending the City from such claims of liability, including attorney's fees, which may be incurred by the City. This indemnification applies and includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs and expenses, and any reimbursements to City for all legal expenses and costs incurred by City.

12. The approval to encroach into the UPROW shall not negate the requirement to obtain all other permits required by applicable governmental agencies, including, but not limited to, the City of Cape Coral and the U.S. Army Corps of Engineers.

13. This approval is to be deemed solely as a right to encroach into the UPROW, as provided herein, and no other property interest is granted to or acquired by Owner(s).

14. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition.

15. This Agreement is intended to be performed in accordance with, and to the extent permitted by, all applicable laws, rules, and regulations of the state of Florida.

16. This Agreement shall be recorded by the City, at the Owner's expense, in the Public Records of Lee County, Florida. This Agreement shall run with the land and be binding upon the parties hereto, their heirs, successors, assigns, and may not be rescinded or amended in any manner without the written consent of the City.

17. The effective date of this Agreement shall be the date the document is executed by the City Manager, or the City Manager's designee. This Agreement shall have no force or effect whatsoever until the effective date.

18. Owner(s) is used for singular or plural, as context requires.

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IN WITNESS WHEREOF, this Agreement is entered into as of the day and year the City Manager, or the City Manager's designee, signs this Agreement as stated below.

OWNER(S): Individual(s)

_____
Witness No. 1

_____
Printed Name

By: _____
Print name:_____
Date:_____

_____
Witness No. 2

_____
Printed Name

By: _____
Print name:_____
Date:_____

{**OR}**

Trust or Entity

Trust or Entity name:_____
By:_____
Print name:_____
Title:_____
Date:_____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20___ by _____ who is/are personally known to me or who has produced _____ as personal identification.

My Commission Expires:

_____
Notary Public

_____
Printed Name

CITY OF CAPE CORAL, FL

_____
Witness

_____
Printed name

By: _____
Michael Ilczyszyn, City Manager

Date:_____

ATTEST:

By: _____
Kimberly Bruns, City Clerk

APPROVED AS TO FORM:

_____
City Attorney's Office

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