





Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 3

DATE: January 10, 2019

TO: Mayor Jerry L. Demings
and the
Board of County Commissioners

THROUGH: Paul Sladek, Manager 
Real Estate Management Division

FROM: Elizabeth Price Jackson, Senior Title Examiner 
Real Estate Management Division

CONTACT PERSON: Paul Sladek, Manager

DIVISION: Real Estate Management
Phone: (407) 836-7090

ACTION REQUESTED: Approval and execution of Right of Entry Agreement between Richard Gardner and Orange County

PROJECT: 2912 Bromley Road, Winter Park, Florida 32792
Right of Entry

District 5

PURPOSE: To provide for access to remove an underground fuel storage tank.

ITEM: Right of Entry Agreement
Cost: Donation
Size: 8,923 square feet
Term: Until regrading of land is complete after tank removal or one year after the Effective Date, whichever occurs first

APPROVALS: Real Estate Management Division
County Attorney's Office
Risk Management Division

REMARKS:

The County right-of-way for Bromley Road has been impacted by a leaking underground fuel storage tank (the "Underground Tank"). In order to minimize any further impact to County right-of-way, the Risk Management Division is arranging to have the Underground Tank removed.

JAN 29 2019

Project: 2912 Bromley Road, Winter Park, Florida 32792
Right of Entry

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT ("Agreement") is made and entered as of the date of the last execution below, between **RICHARD GARDNER**, who resides at 2912 Bromley Road, Winter Park, Florida 32792 ("Licensor"), and **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida (the "County"), whose address is 201 South Rosalind Avenue, Orlando, Florida 32801 ("County" or "Licensee").

RECITALS:

A. Licensor owns a residence at 2912 Bromley Road, Winter Park, Florida 32792, also known by its Parcel Identification Number: 03-22-30-9416-24-080 (the "Property") on which is located a leaking underground storage tank.

B. Licensor desires to have the underground storage tank removed in order to eliminate a potential source of pollution of the soils and groundwater.

C. Licensee has requested a right of entry license for access to the Property in order to remove the leaking underground fuel storage tank and contaminated soil in the vicinity of the tank, and fill the hole created by tank and soil removal with clean fill dirt.

D. The parties desire to enter into this Agreement for the purpose of evidencing their respective rights and obligations in connection with Licensee's request as described above.

NOW, THEREFORE, in consideration of the County removing the underground storage tank at the County's sole cost, the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.

2. **License; No Grant of Easement.** Licensor grants to Licensee a non-exclusive License over, upon and across the Property for the purposes hereinafter stated, all subject to the terms, conditions and limitations set forth in this License. The parties stipulate that this License is for the uses authorized in this Agreement only. This License shall not operate to create or vest any easement or other property right in the Licensee or anyone else.

3. **Purposes of License.** The purpose of the License is to permit Licensee, through itself, its employees, subcontractors, consultants, and agents, to enter upon the Property to (a)

remove a leaky underground fuel tank located outside of the residence on the Property; (b) remove soil adjacent to the underground tank to facilitate the tank removal; (c) fill the hole created by the removal of the tank and soil with clean fill; and (d) regrade the work area to the approximate grade that existed immediately before the start of the work to excavate the tank. The scope of work does not require Licensee to replace any vegetation that may be damaged, killed, or removed as in the process of undertaking the activities described in this paragraph.

4. **Inspections.** All work, materials, and equipment shall be subject to inspection at any time.

5. **Presence of Abnormal Conditions.** In the event Licensee, its employees, subcontractors, or agents encounter any abnormal condition which may indicate the presence of a hazardous substance, toxic waste, or pollutants, Licensee shall immediately cease all work within the Property and immediately contact the Licensor. Abnormal conditions may include discolored earth or groundwater, visible fumes or smoke, abnormal odors, excessively hot soil or water, tanks or barrels, or other conditions which appear abnormal. The Licensor shall notify Licensee of any suspension or revocation of the License to allow for contamination assessment and remediation. The suspension or revocation shall remain in effect until otherwise notified by the Licensor.

6. **Term; Termination of License.** The term of this Agreement shall commence upon its Effective Date (as defined in this Agreement). **This License is terminable at will by the County.** Unless terminated sooner, this License and the rights granted herein with respect to the same expires upon the earlier of (a) at such time as the regrading of the land is completed after tank removal; or (b) after one year from the Effective Date, whichever first occurs.

7. **Restoration of Property.** Licensee is only responsible to refill the hole created by the removal of the tank and associated soils and regrade the surface to the grade that existed immediately prior to the tank removal. Licensee is not responsible to replace any sod or other plants that may be damaged, killed, or otherwise harmed by the activities authorized under this License.

8. **Compliance with Applicable Law; Permits and Approvals.** Licensee, its employees, subcontractors, consultants, and agents shall comply with all applicable federal, state, and local laws and regulations relating to its activities on the Property

9. **Non-Exclusive License.** This License is non-exclusive.

10. **Indemnity.** In consideration of License causing the removal of the underground fuel tank, Licensor agrees to defend, indemnify and hold harmless the County from and against any and all claims, actions, causes of action, loss, damage, injury, liability, fines, cost or expense, including without limitation, attorneys' fees and paralegal fees (whether incurred before, during or after trial, or upon any appellate level), arising from Licensee's removal of the underground fuel tank and removal and replacement of the soil around the tank, or from the exercise by Licensee of any rights granted by this Agreement; excepting, however, that the County shall not be indemnified, saved, defended or kept free and harmless from any loss or liability resulting from its own negligence or the negligence of its contractors, employees or agents.

11. **Insurance.** Licensee shall ensure that each of its subcontractors, consultants or agents performing work on behalf of the Licensee to procure and maintain insurance coverage sufficient to protect the interests of the County and the Licensor.

12. **No Liens.** Licensee shall keep the Property free and clear of all liens and encumbrances arising from the exercise by Licensee of its rights under this Agreement.

13. **Amendment.** This Agreement may be modified or amended in writing in equal dignity with this Agreement, and only upon the mutual consent of the parties hereto, or their respected legal representatives, successors or assigns.

14. **Notices.** Any notice to be given to or served upon any party hereto, in connection herewith, must be in writing, and may be given by hand delivery, certified mail or guaranteed overnight delivery service, return receipt requested, and shall be deemed to have been given and received when a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States Mail or when delivered into the custody of the overnight delivery service. Notices shall be given to the parties at the address set forth opposite the party's name below. Any party hereto may, at any time by giving five days written notice to the other parties hereto, designate any other address in substitution of the foregoing address to which notice shall be given and other parties to whom copies of all notices hereunder shall be sent.

LICENSEE:

Manager
Risk Management Division
109 E. Church Street,
Suite 200
Orlando, Florida 32802

With a copy to:

County Administrator
Orange County Public
Works Department
4200 South John Young
Parkway
Orlando, Florida 32839

LICENSOR

Richard Gardner
2912 Bromley Road,
Winter Park, Florida 32792

15. **Governing Law; Venue.** The parties acknowledge that this Agreement was entered into in the State of Florida. This Agreement shall be construed and governed in accordance with the laws of the State of Florida without giving effect to any choice of laws or rules thereof that may direct the application of laws of another jurisdiction. Venue for any legal action that arises under this Agreement shall be in state court in Orange County, Florida.

16. **Paragraph Headings and Severability of Terms.** The paragraph and subparagraph captions included herein are for reference only and shall not amend, modify or be

used to interpret or construe the meaning or intent of the parties as to any of the terms and provisions hereof. If any provisions of this Agreement or the application thereof shall be held to be invalid or unenforceable in a court of law, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall otherwise remain valid and enforceable to the fullest extent permitted by law.

17. **Attorneys' Fees.** The parties expressly agree that each shall bear the cost of its own attorney fees, paralegal fees, and other professional fees, and costs incurred incidental thereto, for any action (including those incurred before or at trial or any re-hearing or appeal) arising out of or in connection with this Agreement.

18. **Enforcement.** If any party hereto fails to perform or breaches any obligation, requirement, duty or covenant contained herein, the other non-defaulting parties shall have the right, at their option, in addition to any of its other rights, privileges or remedies otherwise stated elsewhere herein to bring an action for specific performance in a court of competent jurisdiction. The failure to enforce any other terms or provisions of this Agreement, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation occurring prior to or subsequent thereto.

19. **Entire Agreement.** This instrument constitutes the entire Agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement.

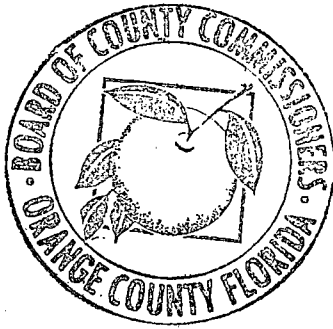
20. **Effective Date.** The Effective Date of this Agreement is the last date this Agreement is executed by the parties.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives on the dates set forth below.

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners



By: *Burrill Brooks*
for Jerry L. Demings
Orange County Mayor

Date: *29 January 2019*

Attest: Phil Diamond, CPA, Orange County
Comptroller as Clerk of the Board of County
Commissioners

By: *Kate Smith*
Deputy Clerk

LICENSOR'S EXECUTION ON NEXT PAGE

RICHARD GARDNER

Richard Gardner

Date: 11-15-2018

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 15 day of NOVEMBER, 2018 by RICHARD GARDNER, who is personally known to me or produced [REDACTED] as identification.

Leticia Lynn Pence

Print Name: LETICIA LYNN PENCE

Notary Public, State of Florida

Commission No.: FF963409

My commission expires: 7-4-2020

Notary Stamp



Leticia Lynn Pence
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF983409
Expires 7/4/2020