

STATE OF TEXAS §
COUNTY OF GALVESTON §

BROOKPORT DRIVE CONSENT TO ENCROACH

WHEREAS, the City of League City, Texas (hereinafter the “**City**”), by virtue of recorded plat dedication(s), is the owner of those certain street, avenue, or boulevard rights-of-way identified as “**BROOKPORT DRIVE (90’ WIDE)**”, with the respective recordation data of said plat(s), on **Exhibit “A”** attached hereto and made a part hereof (the “**ROW**”); and

WHEREAS, Galveston County Management District No. 1 (hereinafter “**Permittee**”) has constructed and desires to construct future sidewalk facilities, lighting, electrical distribution, landscape improvements, future architectural elements and/or water features, irrigation systems, and appurtenances within the ROW (collectively the “**Permitted Improvements**”), and the locations and types of the Permitted Improvements currently existing as of the Effective Date (as defined in Section 1 below) are shown, graphically depicted, and labeled on **Exhibit “B”** attached hereto and made a part hereof; and

WHEREAS, the City recognizes that Permittee has constructed and desires to construct the Permitted Improvements (a) to provide an environment conducive to the enjoyment of patrons of the Pinnacle Park mixed-use development located in the City (“**Pinnacle Park**”) and (b) to enhance the experience of patrons visiting Pinnacle Park; and

WHEREAS, Permittee recognizes the right of the City to require Permittee's protection, removal, or replacement of the Permitted Improvements for the strict and limited purpose of allowing the City to install, repair, maintain, or replace public infrastructure or to protect the public's welfare and safety.

NOW, THEREFORE, the City hereby consents to the Permitted Improvements by Permittee and its successors, assigns, agents, and representatives, such consent being limited to and conditioned upon the following express conditions:

1. EFFECTIVE DATE: This Brookport Drive Consent to Encroach (this “**Consent to Encroach**”) shall be deemed effective (the “**Effective Date**”) on the date it is recorded in the Official Public Records of Galveston County, Texas (the “**OPRGC**”).
2. LIMITED USE: This Consent to Encroach and the consents granted herein shall be limited to the construction and maintenance of the Permitted Improvements. Improvements or encroachments other than the Permitted Improvements are not permitted without additional written consent from the City.

3. MAINTENANCE AND COMPLIANCE WITH CODES AND RESTRICTIONS: The nature and placement of the Permitted Improvements not yet installed or constructed as of the Effective Date shall comply with all ordinances, rules and regulations of the City and of any applicable deed restriction(s), including obtaining all necessary permits and approvals. Permittee agrees to maintain all Permitted Improvements, whether already constructed as of the Effective Date or yet to be constructed, in a manner consistent with other similar mixed-use development rights-of-ways located in the City.
4. REMOVAL AND REPLACEMENT: The Permitted Improvements may be removed or disturbed by the City at any time that the City, in its sole discretion, deems such removal or disturbance to be necessary to effect installation, repair, maintenance or replacement of public infrastructure or to protect the public's welfare and safety. Except in the event of an emergency, as determined in the sole reasonable discretion of the City, the City shall provide Permittee at least five (5) Business Days' prior written notice of the City's intent to remove or disturb any Permitted Improvements to allow Permittee the opportunity to undertake any efforts to minimize damage to the Permitted Improvements. After completion of removal or disturbance of the Permitted Improvements by the City pursuant to this Section 4, Permittee shall have the right, but not the obligation, to restore the Permitted Improvements to the same condition as existed prior to the City's removal or disturbance of the Permitted Improvements. If Permittee chooses to not fully restore the Permitted Improvements, then Permittee shall, at a minimum, replace any of the Permitted Improvements that Permittee is required by law to provide. The Permitted Improvements may be removed at any time by Permittee, except for any Permitted Improvements that Permittee is required by law to provide, provided that after such removal, Permittee restores the ROW to a condition equal to that of other rights-of-way located in the City. For purposes of this Consent to Encroach, "**Business Day**" means any day other than a Saturday, Sunday, or national holiday recognized by commercial banks located in the City.
5. INDEMNIFICATION: **PERMITTEE AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, AND ASSIGNS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, INJURIES, SUITS, CAUSES OF ACTION, JUDGMENTS, OR LIABILITY OF WHATSOEVER CHARACTER OR NATURE, INCLUDING ALL REASONABLE EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEYS' FEES, FOR INJURY OR DEATH TO ANY PERSON OR DAMAGE TO ANY PERSON'S PROPERTY, INCLUDING THE PERMITTED IMPROVEMENTS, ARISING OUT OF OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE ISSUANCE OF THIS CONSENT TO ENCROACH OR PERMITTEE'S USE OR MAINTENANCE OF**

THE PERMITTED IMPROVEMENTS, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY AND ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, AND ASSIGNS. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SECTION 5, PERMITTEE SHALL HAVE NO LIABILITY FOR ANY DAMAGE OR FOR ANY CLAIM ARISING SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY AND ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, AND ASSIGNS. THIS INDEMNIFICATION SHALL SURVIVE THE EARLIER EXPIRATION OR REVOCATION OF THIS CONSENT TO ENCROACH.

6. **RELEASE OF THE CITY LIABILITY:** PERMITTEE, ITS SUCCESSORS AND ASSIGNS, FURTHER RELEASE THE CITY FROM ANY AND ALL LIABILITY FOR LOSS OF OR DAMAGE TO THE PERMITTED IMPROVEMENTS WHICH MAY BE CAUSED BY, RESULT FROM OR BE RELATED TO THE PRESENCE OR MALFUNCTIONING OF THE CITY'S FACILITIES, REGARDLESS OF WHETHER THE CITY'S NEGLIGENCE MAY CONTRIBUTE TO SUCH LOSS OR DAMAGE, EXCEPT TO THE EXTENT ARISING SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY AND ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, AND ASSIGNS.
7. **TERMINATION:** The City may, at its sole discretion, terminate this Consent to Encroach, in total or in part, by giving Permittee, its successors or assigns, written notice of such termination. Such written notice of termination shall be delivered by U. S. Postal Service certified mail return receipt requested. Upon receipt of such notice, Permittee, its successors or assigns, shall have one hundred eighty (180) calendar days to cause the removal of the Permitted Improvements. If such Permitted Improvements have not been removed within said period, then the City may cause the removal of such Permitted Improvements, the reasonable cost of which removal incurred by the City shall be solely borne by the Permittee, its successors or assigns.
8. **PERMITTEE'S SUCCESSORS' ACCEPTANCE OF TERMS:** The exercise and enjoyment by Permittee's successors or assigns of their rights and privileges to which the City has herein granted its consent to encroach shall constitute affirmative acceptance by such successors or assigns of the terms herein contained; provided, however, that the City reserves the right to require that any such successor or assign further signify in a recordable instrument acceptance of such terms and conditions, and should any such successor or assign refuse upon written request to execute such instrument, the rights and privileges herein consented to shall thereupon automatically terminate.

9. SUBMITTALS, EXISTING PERMITTED IMPROVEMENTS: Permittee shall, within sixty (60) calendar days of the Effective Date, submit to the City Engineering Department and Building Department “As-Built” construction drawings, in pdf format on USB compatible flash drive(s), for the Permitted Improvements and related appurtenances that have already been constructed as of the Effective Date for review and verification that such Permitted Improvements meet the City’s codes and regulations. Such “As-Built” construction plans shall be prepared, stamped and signed by a qualified professional, registered to practice in the State of Texas. If such existing Permitted Improvements do not meet the City’s codes and regulations, Permittee shall take all steps to bring them into code compliance within one hundred twenty (120) calendar days of receipt of a non-compliance notification from the City. Permittee shall remit payment to the City of applicable unpaid permit fees at the time that such fees are customarily due. Permittee agrees to submit to the City permit applications for such existing Permitted Improvements within sixty (60) calendar days of the Effective Date. The City shall review Permittee’s permit applications and, within thirty (30) calendar days of their submittal date, issue to Permittee appropriate permits for such existing Permitted Improvements or comments noting the applications’ deficiencies. If the City issues comments, the Permittee shall, within sixty (60) calendar days thereof, correct the noted deficiencies or demonstrate to the City’s reasonable satisfaction why no correction is needed.
10. SUBMITTALS, PROPOSED NEW PERMITTED IMPROVEMENTS: Permittee shall submit to the City a permit application that includes construction drawings for any proposed new Permitted Improvements and related appurtenances not yet constructed as of the Effective Date. Such construction plans shall be prepared, stamped and signed by a qualified professional, registered to practice in the State of Texas. The procedure and deadlines set forth in Section 9 for the submission, review, and approval of permits for existing Permitted Improvements shall apply to the submission, review, and approval of permits for new Permitted Improvements. In no event shall Permittee commence construction of such proposed new Permitted Improvements until the necessary permits are issued by the City. The design of such proposed new Permitted Improvements shall conform to the minimum design criteria set forth in all applicable State, County, and City statutes, ordinances, codes, and policies. Permittee shall remit payment to the City of any applicable permit fees.
11. “AS-BUILTS”, PERMITTED IMPROVEMENTS POST-CONSTRUCTION: For any proposed new Permitted Improvements permitted to be constructed per Section 10 above, Permittee shall provide “As-Built” construction drawings, in pdf format on USB compatible flash drive(s), to the City Engineering Department within one hundred twenty (120) calendar days of Permittee’s completion of construction of such proposed new Permitted Improvements.

12. ACCEPTANCE AND CONSIDERATION: The City shall cause this Consent to Encroach to be recorded in the OPRGC within ten (10) Business Days after the later of the full execution of this Consent to Encroach by the City and Permittee or the recording in the OPRGC of the plat dedicating the ROW as shown on Exhibit "A" hereto. This Consent to Encroach shall be of no force or effect until it is recorded in the OPRGC. The cost of filing this Consent to Encroach in the OPRGC shall be paid by Permittee and such cost advanced shall constitute the consideration for the consents granted herein. Recordation in the OPRGC of this Consent to Encroach constitutes acceptance by the City and Permittee of the terms and conditions contained herein.

WITNESS my/our hand(s) this the ____ day of _____, 2017.

ACCEPTED FOR OURSELF, OUR AGENTS, ASSIGNS, SUCCESSORS AND LEGAL REPRESENTATIVES:

GALVESTON COUNTY MANAGEMENT DISTRICT NO. 1:

BY: _____
William Mather, President

ACKNOWLEDGMENT

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This instrument was acknowledged before me on this the _____ day of _____, 2017, by William Mather, President of Galveston County Management District No. 1, on behalf of said management district.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

WITNESS my/our hand(s) this the ____ day of _____, 2017.

FOR THE CITY OF LEAGUE CITY, TEXAS:

BY: _____
John Baumgartner
City Manager

ACKNOWLEDGMENT

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This instrument was acknowledged before me on this the _____ day of _____, 2017, by John Baumgartner, City Manager of the City of League City, Texas, a municipal corporation, on behalf of said corporation.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

EXHIBIT "A"

"BROOKPORT DRIVE (90') WIDE"

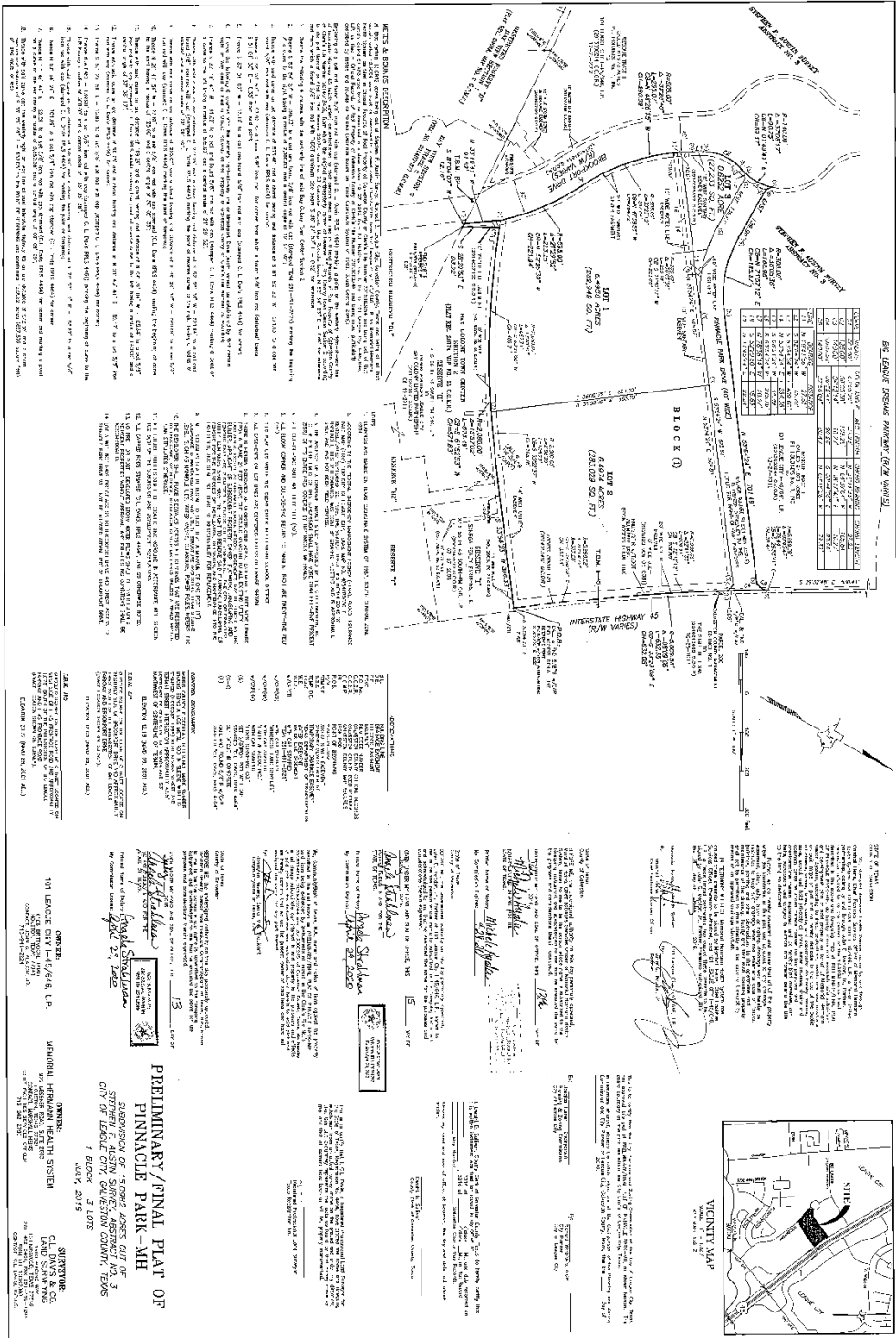


EXHIBIT “B”

Graphic Depictions of Permitted Improvements Existing
as of the Effective Date of the Consent to Encroach

- B-1 Landscaping
- B-2 Irrigation
- B-3 Street Lighting
- B-4 Sidewalks
- B-5 Primary Electrical Conduits

[ATTACHED]