

Return to:
City of Lake Worth
Attn: City Clerk
7 North Dixie Highway
Lake Worth Beach, FL 33460-3787

RIGHT-OF-WAY REVOCABLE PERMIT

THIS RIGHT-OF-WAY REVOCABLE PERMIT ("Permit") is made on this _____ day of _____, 202__, between the CITY OF LAKE WORTH BEACH ("City") and WILLIAM AND TERRI DOUGHERTY, husband and wife (jointly and severally, the "Permittee").

RECITALS

WHEREAS, the Permittee is the owner of the real property located at 1229 S. N St. in the City of Lake Worth Beach ("Property"); and

WHEREAS, the City owns and/or maintains the right-of-way adjacent to 1229 S. N St. Lake Worth Beach, 33460; and

WHEREAS, the Permittee submitted a revocable use permit application to utilize a portion of the ROW ("ROW Premises") to install fencing, which use is more specifically described herein; and

WHEREAS, the City has reviewed the application of the Permittee and the proposed use of the ROW Premises, and has determined that the application and proposed use of the ROW Premises is acceptable to the City; and

WHEREAS, pursuant to the City's responsibility for City right-of-way, the City for and in consideration of the restrictions and covenants herein contained, hereby permits the use of the ROW Premises by the Permittee in accordance with the terms and conditions of this Permit and all applicable laws.

IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED BY THE RESPECTIVE PARTIES HERETO:

ARTICLE I – INCORPORATION

The foregoing recitals are incorporated into this Permit as true and correct statements.

ARTICLE II – ROW PREMISES & USE OF ROW PREMISES BY PERMITTEE

Pursuant to the Permittee's revocable use permit application, which is incorporated herein by reference, the City hereby permits the Permittee to use the following described ROW Premises:

The Revocable Permit area is limited to a rectangular 79-foot by 6-foot strip within the 13th Avenue South right-of-way, beginning at the southwest corner of the Property boundary of 1229 S. N Street. The strip extends easterly from that point along and immediately south of the Property's south boundary for

approximately 79 feet, with a width of 6 feet into the right-of-way, as shown on the submitted survey and fence layout.

The use of the ROW Premises by the Permittee shall be for a fence and landscaping in accordance with the Permittee's application, all conditions of this Permit and applicable law. No other improvement(s) of any kind shall be made to the ROW Premises without the prior written consent of the City by a written amendment to this Permit. This Permit grants a license for such use to the Permittee and does not grant a property interest or an estate in the ROW Premises. This Permit expires twenty (20) years after the City executes the same; however, this Permit is revocable as further stated herein.

ARTICLE III – CONDITIONS OF USE

The use of the ROW Premises is limited to the use identified in this Permit, Permittee's revocable use permit application, applicable law, and conditioned upon the Permittee complying with all conditions for use and improvements to the ROW Premises. The conditions of use are attached hereto as **Exhibit "A"** and incorporated herein by reference.

ARTICLE IV - IMPROVEMENTS BY PERMITTEE

The Permittee shall have sole responsibility for obtaining all regulatory approvals, permits or licenses required for the placement of improvements upon the ROW Premises. The improvements made by Permittee shall be removed from the ROW Premises at the expiration or revocation of this Permit; however, the Permittee may apply in writing to the City for an extension of this Permit not more than ninety (90) days prior to the expiration date. Removal by the City of the improvements made by the Permittee or portions thereof shall be at the sole expense of the Permittee and governed by Article XII herein.

ARTICLE V - CONDITIONS OF PREMISES AND MAINTENANCE

The Permittee, at his and/or her own expense, shall cause the improvements and the ROW Premises to be in a state of good condition and repair for the life of this Permit. The Permittee shall maintain and keep the improvements and the ROW Premises in a safe, clean condition, free of refuse and debris. All installed improvements shall be maintained in good working order and aesthetically appropriate and compatible with the surrounding area. Applicant shall maintain free access to the ROW. Determination of the condition of the improvements and the ROW Premises shall be made by the City. The Permittee shall also use and maintain the ROW Premises in compliance with this Permit, the City's code of ordinances, and all applicable governmental laws, rules and regulations including, without limitation, the Americans with Disabilities Act and Florida Department of Transportation standards.

ARTICLE VI - INDEMNIFICATION

The Permittee will indemnify, hold and save the City, its officers, agents, contractors and employees whole and harmless, and at City's option defend same, from and against all claims, demands, actions, damages, loss, cost, liabilities, expenses, and judgments of any nature recovered from or asserted against the City, its officers, agents, contractors and/or employees on account of injury or damage to person or property to the extent that any such damage or injury may be incident to, arise out of, or be caused, either proximately or remotely, wholly or in part, by the Permittee's use of the ROW Premises, this Permit, or any act, omission, negligence or misconduct on the part of the Permittee or any of its agents, servants, employees, contractors, guests, licensees or invitees or of any other person relating to or

arising from the ROW Premises. The Permittee covenants and agrees that in the event the City shall be made party to any litigation against the Permittee, or in any litigation commenced by any party against any party other than Permittee relating to this Permit or to the ROW Premises used hereunder, then the Permittee shall and will pay all costs and expenses, including reasonable attorney's fees and court costs, incurred by or imposed upon City by virtue of any such litigation, including appeals.

The provisions of this Permit relating to indemnification shall survive any termination or expiration of this Permit. Additionally, any provisions of this Permit which requires performance subsequent to the termination or expiration of this Permit shall also survive such termination or expiration.

ARTICLE VII - NO LIABILITY FOR PERSONAL PROPERTY

All personal property placed or moved on the ROW Premises shall be at the risk of the Permittee or the owner thereof. The City shall not be liable to the Permittee or owner for any damage to said personal property.

ARTICLE VIII - CITY'S RIGHT OF ENTRY

The City or any of its agents shall have the right to enter upon the ROW Premises for the purpose of inspecting the improvements and/or the ROW Premises, or to gain access to or repair any utilities located within the ROW Premises. Such right of entry shall, likewise, exist for the purpose of removing structures, improvements, alterations or landscaping which do not conform to this Permit. Any removal of the above, or damages to the allowed improvements or landscaping made by the City and necessitated by the Permittee's use of said ROW Premises, shall be at the sole expense of the Permittee. Further, the City shall not be responsible for the restoration of the ROW Premises including its fixtures and landscaping, in the event such are damaged or removed by the City in order to inspect, repair or gain access to its utilities located on within the ROW Premises. Additionally, any expenses incurred by the City, but not paid by the Permittee, in removing such improvements or landscaping shall become a lien upon the Permittee's abutting property, which may be foreclosed upon by the City if not promptly paid.

ARTICLE IX - REVOCATION OF PERMIT

It is understood and agreed between the parties hereto that the City may, in its sole discretion, upon ten (10) days prior written notice to the Permittee, revoke and terminate this Permit. The City's right to terminate this Permit is absolute and shall not result in any inequity to the Permittee because of any authorized improvements by the Permittee to the ROW Premises. Accordingly, this Permit shall not be construed as an irrevocable permit, irrevocable license or a license coupled with an interest because of said improvements. Further, the Permittee acknowledges that the City and the public will be irreparably damaged if the terms and conditions of this Permit are not adhered to and specifically enforced. Therefore, in the event of a violation or threatened violation by the Permittee, then the City shall be entitled to all the rights and remedies, including but not limited to injunctive relief, restraining such violation without being required to show any actual damage, irreparable harm, or to post any bond or other security.

ARTICLE X - NOTICES

It is understood and agreed between the parties hereto that written notice addressed to the Permittee and mailed regular mail or hand delivered to William and Terri Daughtery, 1229 S. N St., Lake

Worth Beach, Florida 33460, shall constitute sufficient notice to the Permittee, and written notice addressed to the City Manager and mailed regular mail or hand delivered to the City of Lake Worth Beach, Attn: City Manager, 7 North Dixie Highway, Lake Worth Beach, Florida 33460, shall constitute sufficient notice to the City to comply with the terms herein.

ARTICLE XI - ASSIGNMENT

Without the written consent of the City first obtained in each case, the Permittee shall not sublet, assign, transfer, mortgage, pledge, or dispose of this Permit for the term hereof.

ARTICLE XII - SURRENDER OF ROW PREMISES

At the expiration or revocation of this Permit, Permittee shall, unless other arrangements have been made prior and are approved in writing by the City Commission, without demand, quietly and peaceably deliver possession of the ROW Premises free of any fencing or other like fixtures or improvements. The Permittee shall be responsible for the expenses of returning the ROW Premises to its pre-permit condition, which conditions existed of unpaved right-of-way with sidewalk. If the ROW Premises are not in such condition, at the expiration or revocation of this Permit, Permittee hereby agrees that the City shall have the right to restore the ROW Premises to such condition. The Permittee agrees to reimburse the City for all such expenses within thirty (30) days of mailing of a statement to the Permittee at the address indicated in Article X. If not so paid, the expenses incurred by the City in doing so shall become a lien upon the Permittee's abutting property and may be foreclosed upon, or the City, at its option, may seek such other remedies as may be allowable by law.

ARTICLE XIII – LIMITATION OF RIGHTS

The parties to this Permit specifically agree that the ROW Premises described herein shall at all times remain public right-of-way property unless formally abandoned by the City and that no prescriptive rights shall ever vest in Permittee regardless of any improvements made. Nothing contained herein, whether express or implied, is intended to confer any rights or remedies under or by reason of this Permit on any persons other than the parties hereto and their respective administrators and legal representatives, nor is anything in this Permit intended to relieve or discharge the obligation or liability of any third person to any party to this Permit nor shall any provision give any third persons any right of subrogation or action over or against any party to this Permit.

ARTICLE XIV – MISCELLANEOUS

It is agreed and understood that this Permit contains all agreements, promises and understandings between the City and the Permittee and that no verbal or oral agreements, promises or understandings shall be binding upon either the City or in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Permit shall be void and ineffective unless made in writing signed by the parties. In the event any provision of this Permit is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Permit. The failure of either party to insist upon strict performance of any of the terms or conditions of this Permit or to exercise any of its rights under this Permit shall not waive such rights and such party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Permit, in law or in equity.

This Permit shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

There are no third party beneficiaries to this Permit.

This Permit and all acts thereunder shall be governed, interpreted, construed and regulated by the laws of the State of Florida and venue for any action arising out of this Permit shall be exclusively in Palm Beach County, Florida. **Further, if for any reason a claim, dispute or controversy is not resolved by the parties, the parties irrevocably and voluntarily agree to waive any right to a trial by jury in respect to any such claim, dispute or controversy.**

This Permit may be executed in one or more counterparts and by digital or electronic means, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE XIV - RECORDING OF THIS DOCUMENT

This Permit shall be recorded in the official records in and for Palm Beach County, Florida. However, if this Permit is not recorded or cannot be located in official records, the lack of recording shall not impact or diminish the rights of the City as stated herein and the obligations of the Permittee as stated herein.

PERMITTEE FURTHER STATES THAT PERMITTEE HAS CAREFULLY READ THE FOREGOING REVOCABLE PERMIT AND KNOWS THE CONTENTS THEREOF AND FULLY REALIZE ITS MEANING AND SIGNS THIS REVOCABLE PERMIT OF HIS AND HER OWN FREE WILL.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties have hereunto executed this Right-of-Way Revocable Permit for the purposes herein expressed the day and year first above written.

WITNESSES:

CITY OF LAKE WORTH BEACH

Signature of Witness

Printed Name

By:_____

Signature of Witness

Print Name

PERMITTEE:

WITNESSES:

William Dougherty

Signature of Witness

Printed Name

Address of Witness

Signature of Witness

Printed Name

Address of Witness

WITNESSES:

Terri Dougherty

Signature of Witness

Printed Name

Address of Witness

Signature of Witness

Printed Name

Address of Witness

Exhibit “A”

City Conditions for Use

- The permit shall be limited to the installation, maintenance, repair, and replacement of a fence, together with any required landscaping directly associated with the fence, along the south side of the Property at the approved location.
- The fence, including its location, height, dimensions, materials, setbacks, gates, landscaping, construction details, and final permitting, shall comply with all applicable City zoning, land development, building, engineering, and right-of-way requirements, including the City’s fence regulations and all applicable provisions of the City Code of Ordinances.
- The proposed six-foot fence shall be subject to the City’s applicable landscaping and screening requirements. Any required landscape screen shall be installed in front of the fence, on the right-of-way-facing side, or as otherwise approved by the City through the applicable zoning and fence permit review per LDR section 23.4-4.
- The fence may be located along the approved property boundary only to the extent authorized by this Revocable Permit and only after approval through the applicable fence permit, zoning review, engineering review, and right-of-way review.
- The Permittee shall be responsible, at its sole cost, for obtaining all required permits and approvals before installation, including any approvals required for removal, modification, or restoration of sidewalk, pavement, landscaping, or other improvements within the right-of-way.
- To the extent sidewalk removal or modification is required to accommodate the approved six-foot fence and required landscaping, the Permittee shall be solely responsible for such removal or modification, subject to prior City approval and all applicable permit requirements.
- If this Revocable Permit is revoked, expires, or is otherwise terminated, the Permittee shall, at its sole cost, remove the fence, landscaping, and any related improvements from the permitted area and restore the right-of-way, including restoration or replacement of the sidewalk, to a condition acceptable to the City.
- The fence and landscaping shall not interfere with public access, visibility, sight triangles, drainage, utilities, utility access, City maintenance activities, or any other public purpose, except as expressly approved by the City through the applicable permit review.
- The Permittee shall maintain the fence, required landscaping, and permitted area in a safe, clean, code-compliant, and aesthetically appropriate condition at its sole cost.
- This permit does not abandon, vacate, convey, or otherwise transfer any City right-of-way or City interest, and no prescriptive rights shall vest in the Permittee.

- The Permittee shall be responsible for all costs related to installation, maintenance, repair, replacement, relocation, removal, and restoration of the fence, landscaping, sidewalk, and permitted area.
- The City shall retain the right of entry to repair utilities, perform maintenance, remove unauthorized improvements, or remove authorized improvements when necessary to access City property, public right-of-way, utilities, or easements. The City shall not be responsible for replacement or repair of such improvements.
- The Revocable Permit shall be recorded in the Public Records of Palm Beach County.
- Unless otherwise stated in the permit, the permit shall terminate after twenty (20) years, unless surrendered or revoked earlier.
- The Revocable Permit shall be revocable at the sole discretion of the City Commission upon ten (10) days prior written notice to the Permittee.