

Re. \$ \_\_\_\_\_

This Instrument Prepared by:  
Fred N. Roberts, Jr., Esq.  
Klein & Klein, LLC  
40 SE 11<sup>th</sup> Avenue  
Ocala, FL 34471

Record and Return to:  
Development Coordinator City of Ocala  
Growth Management Department  
201 SE 3rd Street, 2nd Floor  
Ocala, FL 34471

## AGREEMENT CONCERNING EASEMENTS FOR ENCROACHMENTS IN TO RIGHT OF WAY

**THIS AGREEMENT CONCERNING EASEMENTS FOR ENCROACHMENTS  
IN TO RIGHT OF WAY** ("Agreement") is entered into this \_\_\_\_\_, 2022, by and between:

- City of Ocala, a Florida municipal corporation ("City"); and
- MRL Restaurant Holdings, LLC, a Florida limited liability company ("Grantee").

### **WHEREAS:**

- A. Grantee owns real property (the "Grantee Property") as described in the attached **Exhibit A**, upon which an existing building has been constructed (the "Existing Building").
- B. Grantee has or desires to demolish the Existing Building and construct a new building (the "New Building Improvements") as substantially shown on the design drawing attached hereto as **Exhibit B** (the "Plans").
- C. Portions of the New Building Improvements (the "Encroaching Improvements") will encroach within a portion of the rights-of-way of SW Broadway Street ("Broadway ROW") and of SW 1<sup>st</sup> Avenue ("1<sup>st</sup> ROW") (Broadway ROW and 1<sup>st</sup> ROW collectively referred to as "City ROW").
- D. Grantee has requested City to permit Grantee to construct the Encroaching Improvements within the City ROW in accordance with the Plans, and for the City to grant to Grantee easements for the construction and maintenance of the Encroaching Improvements within the City ROW.
- E. City has advised Grantee that it will grant to Grantee a building permit allowing the construction of the Encroaching Improvements, and shall grant the requested easements over the portions (the "Easements Areas") of the City ROW upon which the New Building Improvements are constructed, which Easements Areas shall be further defined through the Easements Areas Legal Description (as herein defined), and which grant of easements shall be subject to the terms and conditions of this Agreement.

**NOW THEREFORE**, in consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto agree as follows:

1. **Consent to Construction of the New Building Improvements.** City hereby consents to the construction of the New Building Improvements, which New Building Improvements shall be constructed in substantial accordance with the Plans.
2. **Grant of Easements.**
  - 2.1. Subject to the right of the City to terminate it as set forth herein, the City hereby grants to Grantee the following non-exclusive (except as set for the below) easements (the “Easements”):
    - 2.1.1. One or more easements (the “Overhang Easements”) in the airspace above portions of the City ROW described or depicted on the attached **Exhibit C** to permit the construction and maintenance of portions of the Building Improvements. The Overhang Easements shall be exclusive only to the extent of the portions of the airspace actually occupied by the Encroaching Improvements located therein.
    - 2.1.2. An easement (the “Ramp Easement”) on and above the portion of the City ROW described or depicted on the attached **Exhibit C** (the “Ramp Easements Areas”) for the purposes of constructing and maintaining the Ramp.
    - 2.1.3. An easement (the “Grease Trap Easements”) to permit the construction and maintenance of grease traps installed, maintained and used in connection with the Building Improvements on, under or above those portions of the City ROW described or depicted on the attached **Exhibit D**.
    - 2.1.4. An easement (the “Elevator Easement”) to permit the construction of the wall, footer, foundation, mechanical equipment, elevator equipment and related improvements on, under or above those portions of the City ROW described or depicted on the attached **Exhibit E**.
  - 2.2. Upon completion of the New Building Improvements, Grantee shall have a survey of those portions of the City ROW over or upon which the Encroaching Improvements are located (the “As Built Survey”), which As Built Survey shall contain separate legal descriptions for each Easement Area (the “Easement Areas Legal Descriptions”), and shall indicate for which Easement is each of the Easement Area. The As Built Survey and Easement Areas Legal Descriptions shall be subject to the reasonable approval of the City, which approval shall not be unreasonably conditioned, withheld or delayed. Upon approval by the City, the As Built Survey and Easement Areas Legal Descriptions shall be incorporated herein by Addendum to Easements Agreement executed by Grantee and City (the “Addendum”), which Addendum shall also be in recordable form, and this Agreement, together with the Addendum, shall be recorded in the Public Records of Marion County, Florida. Grantee shall bear the cost of recording this Agreement and the Addendum.
  - 2.3. The Easements granted hereby shall be:
    - 2.3.1. Appurtenant to the Owner Property; and
    - 2.3.2. Junior and inferior to any right of City to utilize the Easements Areas for existing utilities.

3. **Insurance.**

- 3.1. Owner shall indemnify City and its elected officials, employees and volunteers against, and hold indemnify City and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including attorneys' fees, which City may sustain, or which may be asserted against City, arising out of this Agreement, Owner's use of the Easements Areas or the Encroaching Improvements, including, without limitation, harm or personal injury to the Owner or third persons in the Easements Areas.
- 3.2. Owner shall cause to be maintained during the duration of this Agreement and all periods in which Owner uses the Easements Areas, such general liability insurance as will provide coverage for claims for damages for personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from Owner's use of the Easements Areas or the Encroaching Improvements. The amount of insurance shall not be less than \$1,000,000 for injury to one person arising out of a single incident and \$1,000,000 for injuries to more than one person arising out of a single incident, and \$1,000,000 for property damage, with a deductible in an amount to be approved by City. Owner shall provide City with certificates of insurance issued by a company authorized to do business in the State of Florida and with an A.M. Best Company rating of at least A, and evidencing Owner has obtained, and paid all premiums for, insurance coverage required hereunder. Such certificates shall: list "City of Ocala, a Florida municipal corporation," as an additional insured; provide that City shall receive at least 30 days' notice before the insurance agreement may be canceled for non-payment or otherwise; and contain a severability of interest provision so that City is treated as if a separate policy of insurance was in existence. These insurance requirements do not relieve or limit the liability of Owner. City does not represent that these types or amounts of insurance are sufficient or adequate to protect Owner's interests or liabilities, but are merely minimums. The insurance required of Owner or any insurance of Owner shall be considered primary, and any insurance or self-insurance of City shall be considered excess, as may be applicable, to claims against City which may arise.
- 3.3. Owner is responsible at all times for reasonable precautions to achieve the protection of all persons, including employees and guests, and property within the Easements Areas.
- 3.4. In the event that Owner shall fail to obtain or maintain in full force and effect any insurance coverage required to be obtained by Owner under this Agreement, after written notice to Owner and ten (10) days opportunity to cure, City may procure same from such insurance carriers as City may deem proper, irrespective that a lesser premium for such insurance coverage may have been obtained from another insurance carrier, and Owner shall pay, upon demand of City, any and all premiums, costs, charges and expenses incurred or expended by City in obtaining such insurance. Notwithstanding the foregoing sentence, in the event City shall procure insurance coverage required of Owner hereunder, City shall in no manner be liable to Owner for any insufficiency or failure of coverage with regard to such insurance or any loss to Owner occasioned thereby, and additionally, the procurement of such insurance by City shall not relieve Owner of its obligations under this Agreement to maintain insurance coverage in the types and amounts herein specified, and Owner shall

nevertheless hold City harmless from any loss or damage incurred or suffered by City from Owner's failure to maintain such insurance.

4. **Termination.** The City will have the right to terminate this Agreement (and the Easements arising hereunder) subject to the following terms and provisions:
  - 4.1. Default by Owner. City shall have the right to terminate this Agreement in the event of any default by Owner of its obligations under paragraph 3, which default continues for a period of greater than thirty (30) days after the date notice of the default is provided by City to Owner.
  - 4.2. Failure to Reconstruct. City will have the right to terminate this Agreement in part as to any portions of the Easements Areas in which any Encroaching Improvements are destroyed or demolished if Owner does not: (a) commence with reconstruction thereof within one hundred eighty (180) days of receiving written notice from City; and (b) thereafter pursue reconstruction of such Encroaching Improvements, as modified, to completion within a reasonable time thereafter.
  - 4.3. Procedure. City shall provide Owner with written notice of any termination hereunder. Upon termination of this Agreement, Owner will, within thirty (30) days of the date of such termination, commence with complete removal of the Encroaching Improvements from the Easements Areas and shall diligently pursue such efforts until completion. If Owner fails to commence with removal of the Encroaching Improvements from the Easements Areas within such time period, or fails to cause for the complete removal within one hundred twenty (120) days of commencement of work, then City is authorized to have the Encroaching Improvements removed from the Easements Areas, in which event Owner agrees to reimburse City for all costs incurred by City in removing the Encroaching Improvements. Upon a termination of the Easements, Owner shall execute and deliver to City a recordable instrument acknowledging that the Easements have been terminated.
  - 4.4. No termination of this Agreement shall release Owner from its obligations under paragraph 3 that arose prior to the date of the termination or Owner's removal of the Encroaching Improvements from the Easements Areas under paragraph 4.3.
5. **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Easement Areas to the general public, or for any public use or purpose whatsoever. No right, privileges or immunities of Grantee hereto shall inure to the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained in this Agreement.
6. **Covenant Running With Land.**
  - 6.1. This Agreement and the rights arising hereunder shall be deemed covenants running with the Grantee Property, and thus shall benefit, and be binding upon, Grantee and its respective legal representatives, heirs, successors and assigns.
  - 6.2. Upon the transfer of title (including by foreclosure of a mortgage or other lien) of the Grantee Property:

- 6.2.1. The previous owner shall be deemed released from all obligations or liabilities arising after, but not prior to, such conveyance; and
  - 6.2.2. The new owner shall be liable for all obligations and liabilities arising prior and subsequent to the transfer.
- 7. **Estoppel.** Upon request of Grantee, City shall promptly, and in no event later than thirty (30) days after a request from Grantee or any lender or mortgagee of Grantee, execute, acknowledge and deliver to Grantee a or such lender or mortgagee, as the case may be, a certificate stating, that there are no violations or defaults under the terms of this Agreement as of the date of such certificate.
- 8. **General Provisions.**
  - 8.1. Attorneys' Fees. If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by the attorney to the prevailing party.
  - 8.2. Jurisdiction and Venue. The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court or the right to bring an action or proceeding in any other court.
  - 8.3. JURY WAIVER. EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE

OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

- 8.4. Effective Date. The Effective Date of this Agreement will be the date of execution by the last of the parties hereto.
- 8.5. No Assignment. Except as set forth above, this Agreement may not be assigned in whole or in part by either party except with the prior written consent of the other party which may be withheld at the sole discretion of the non-assigning party.
- 8.6. Reference to Parties. Each reference herein to the parties shall be deemed to include their successors, permitted assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
- 8.7. Construction of Agreement. Each party acknowledges that all parties to this Agreement participated equally in the drafting of this Agreement and that it was negotiated at arm's length. Accordingly, no court construing this Agreement shall construe it more strongly against one party than another.
- 8.8. Waiver. The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
- 8.9. Governing Law. This Agreement is and shall be deemed to be a contract entered into and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
- 8.10. Severability of Illegal Provisions. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
- 8.11. Section Headings. The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
- 8.12. Rights of Third Parties. Unless expressly stated herein to the contrary, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

8.13. Notice.

8.13.1. All notices, requests, consents and other communications (each a "Communication") required or permitted under this Agreement shall be in writing (including emailed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, emailed or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses as any party may designate by Communication complying with the terms of this paragraph:

- a. If to Grantee: MRL Restaurant Holdings, LLC, Attn: Matthew R. Larmoyeux; Ocala, Florida 34471; email: matt@districtbk.com.
- b. If to City: City of Ocala, Attn: City Real Estate Officer, 1805 NE 30th Avenue, Building 700, Ocala, FL 34470; email: tltaylor@ocalafl.org.

8.13.2. Each such Communication shall be deemed delivered:

- a. On the date of delivery if by personal delivery;
- b. On the date of email transmission if by email (subject to paragraph 8.13.5); and
- c. If the Communication is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; or (b) the date upon which delivery is refused.
- d. Notwithstanding the foregoing, service by personal delivery delivered, or by email sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.

8.13.3. If a Communication is delivered by multiple means, the Communication shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.

8.13.4. If the above provisions require Communication to be delivered to more than one person (including a copy), the Communication shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

8.13.5. Concerning Communications sent by email:

- a. The Communication shall not be deemed to have been delivered if the sender receives a message from the sender's or the recipient's internet service provider or otherwise that the email was not delivered or received;
- b. If the sender receives an automatic reply message indicating that the recipient is not present to receive the email (commonly referred to

as an “out of the office message”), the email shall not be deemed delivered until the recipient returns;

- c. Any email that the recipient replies to, or forwards to any person, shall be deemed delivered to the recipient.
  - d. The sender must print the email to establish that it was sent (though it need not do so at the time the email was sent); and
  - e. The sender shall maintain the digital copy of the email in its email system for a period of no less than one year after it was sent.
- 8.14. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
- 8.15. Amendment. No amendment to this Agreement shall be effective except those agreed to in writing and signed by both of the parties to this Agreement.
- 8.16. Entire Agreement. This Agreement, including exhibit, (if any) contains all agreements between the parties. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties, except to the extent reference is made thereto in this Agreement

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.**

**SIGNATURE PAGES FOLLOW.]**



**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year first written above.

**City of Ocala, a Florida municipal corporation**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Witness Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Witness Name

\_\_\_\_\_  
President, Ocala City Council

**ATTEST:**

\_\_\_\_\_  
Angel B. Jacobs  
City Clerk

Approved as to form and legality

\_\_\_\_\_  
Robert W. Batsel  
City Attorney

STATE OF FLORIDA  
COUNTY OF MARION

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, as City Council President of the City of Ocala, Florida, a Florida municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public, State of Florida

Name: \_\_\_\_\_  
(Please print or type)

Commission Number:

Commission Expires:

Notary: Check one of the following:

\_\_\_\_\_ Personally known OR

\_\_\_\_\_ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: \_\_\_\_\_

**MRL Restaurant Holdings, LLC, a Florida  
limited liability company**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Witness Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Witness Name

By: \_\_\_\_\_  
Matthew R. Larmoyeux, Manager

STATE OF FLORIDA  
COUNTY OF MARION

The foregoing instrument was acknowledged before me by means of ☐ physical presence or  
☐ online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Matthew R. Larmoyeux, as  
Manager of MRL Restaurant Holdings, LLC, a Florida limited liability company, on behalf of the  
company.

\_\_\_\_\_  
Notary Public, State of Florida

Name: \_\_\_\_\_  
(Please print or type)

Commission Number:

Commission Expires:

Notary: Check one of the following:

\_\_\_\_\_ Personally known OR

\_\_\_\_\_ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: \_\_\_\_\_

**EXHIBIT A**  
**Grantee Property Legal Description**

**A portion of Lot 1, Block 35 of OLD SURVEY OCALA, as per plat thereof recorded in Plat Book E, Page 2, Public Records of Marion County Florida, being more particularly described as follows:**

**Commence at the NE corner of said Lot 1, Block 35, thence along the North boundary of said Lot 1, Block 35, also being the South right-of-way line of S.W. Broadway, a 59 foot right-of-way as now existing (June 24, 2005), S.89°53'53"W., a distance of 6.50 feet to the Point of Beginning. Thence departing said North boundary and said South right-of-way line along the West right-of-way line of S.W. 1st Avenue, a 40 foot right-of-way, as now existing (June 24, 2005), S.00°11'26"E., a distance of 34.43 feet, thence departing said West right-of-way line S.89°50'52"W., a distance of 49.64 feet, thence S.00°05'41"W., a distance of 21.52 feet, thence N.89°54'19"W., a distance of 0.52 feet, thence S.00°05'41"W., a distance of 13.87 feet, thence S.89°26'08"W., a distance of 17.37 feet, thence N.00°06'13"E., a distance of 3.47 feet, thence N.89°53'47"W., a distance of 10.00 feet, thence N.00°06'13"E., a distance of 66.49 feet to a point on said North boundary of Lot 1, Block 35 and said South right-of-way line of S.W. Broadway, thence along said North boundary and said South right-of-way line N.89°53'53"E., a distance of 77.35 feet to a Point Beginning.**

**TOGETHER WITH an Elevator Easement being more particularly described as follows:**

**Commence at the NE corner of said Lot 1, Block 35, thence along the North boundary of said Lot 1, Block 35, also being the South right-of-way line of S.W. Broadway, a 59 foot right-of-way as now existing (June 24, 2005), S.89°53'53"W., a distance of 6.50 feet, thence departing said North boundary and said South right-of-way line along the West right-of-way line of S.W. 1st Avenue, a 40 foot right-of-way, as now existing (June 24, 2005), S.00°11'26"E., a distance of 34.43 feet, thence departing said West right-of-way line S.89°50'52"W., a distance of 37.30 feet to the Point of Beginning. Thence S.00°11'02"W., a distance of 9.06 feet, thence N.89°48'58"W., a distance of 4.22 feet, thence S.00°11'02"W., a distance of 12.48 feet, thence S.89°47'56"W., a distance of 8.08 feet, thence N.00°05'41"E., a distance of 21.52 feet, thence N.89°50'52"E., a distance of 12.34 feet to the Point of Beginning.**

**EXHIBIT B**  
**Plans**  
**(6 Page Attached)**

**EXHIBIT C**  
**Overhang & Ramp Easements**  
**(2 Page Attached)**

**EXHIBIT D**  
**Grease Trap Easements**  
**(1 Page Attached)**

**EXHIBIT E**  
**Elevator Easement**  
**(1 Page Attached)**