

PREPARED BY & AFTER RECORDATION RETURN TO:  
City of Hampton Virginia  
Office of the City Attorney (CCI)  
22 Lincoln Street, 8th Floor  
Hampton, VA 23669  
(757) 727-6127

### ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (this "Agreement") made and entered into this \_\_\_\_\_ day of May, 2019, between the CITY OF HAMPTON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia located at 22 Lincoln Street, Hampton, Virginia 23669 (the "City" and "Grantor"), and **BONNER M. SECRET and HEATHER N. SECRET** ("Licensees" and "Grantees").

WHEREAS, the Licensees are owners of the property located at 51 Buffalo Drive, Hampton, Virginia 23664 (LRSN 11003435) (Licensees' Parcel);

WHEREAS, the City is owner of a certain 10' wide existing drainage and utility easement located along the western property line of Licensees' Parcel, as well as a certain 10' wide existing drainage and utility easement, of which the northerly one-half (5') is located along the southerly property line of Licensees' Parcel.

WHEREAS, Licensees' Parcel is burdened with the said 10' wide existing drainage and utility easement along the westerly property line and the northerly one-half (5') of the existing drainage and utility easement along the southerly property line for the benefit of the City as illustrated on Exhibit A attached hereto (the "Easement");

WHEREAS, Licensees requested that the City grant them permission to encroach into a 342 square foot area of the Easements, all areas more or less ("Licensed Area"), to install a wooden privacy fence with a 10' drive gate and a 4' walk gate for City access to the Easement

area, including, but not limited to, access for stormwater maintenance (“the Licensed Improvement”) as illustrated on Exhibit “A” attached hereto; and

WHEREAS, pursuant to Hampton City Code §34-86, the City agrees to grant Licensees a revocable license for Use of the Licensed Area and installation of the Licensed Improvement, subject to certain terms, conditions, and agreements, as specified herein.

NOW, THEREFORE, in consideration of these covenants, the parties agree as follows:

1. The recitals are accurate and are incorporated herein as stated above.
2. The City:
  - A. Grants a non-exclusive revocable license (the “Revocable License”) to Licensees for the installation and operation of the Licensed Improvement upon and under the Property in the Licensed Area which shall commence on May \_\_\_\_\_, 2019 and continue unless and until terminated pursuant to this Agreement; and
  - B. Shall not be responsible for the installation, repair, replacement, maintenance of the Licensed Improvement, or any damage to the Licensed Improvement that may result from work performed in the Easement by the City, its employees, contractors, agents, or other Licensees.
3. Licensees agrees at its sole cost and expense to:
  - A. Repair any damage to existing right-of-way, sidewalks and brick, landscaping, or other public improvements inside or outside the Licensed Area, caused by or resulting from or arising out of any act on the part of Licensees, its subcontractors, agents, or employees under or in connection with this Agreement, or maintenance or repair of the Licensed Improvement in the Licensed Area;

- B. Licensees shall ensure that the Licensed Improvement or any other permanent structure does not restrict the City's ability to inspect, repair, and/or maintain the Easement or infrastructure in the Licensed Area;
- C. All work under this Agreement shall occur within the Easement area;
- D. Maintain and repair the Licensed Improvement;
- E. Remove and replace the Licensed Improvement if any utilities in the Licensed Area require maintenance;
- F. Ensure the Licensed Improvement does not restrict the City's ability to inspect and maintain the Property or infrastructure in the Licensed Area;
- G. Abide by all utility regulations when crossing existing utilities, including but not limited to, avoiding any interference with other utilities;
- H. Abide all other city, state, and local laws and regulations that may be applicable to the installation and maintenance of the Licensed Improvement; and
- I. Except as otherwise provided herein, keep the Licensed Area in a neat and clean manner, free of noxious fumes and any obstructions so as not to cause disruption or hazard to pedestrian or vehicular traffic on or through the Property.

4. This Agreement pertains only to the Licensed Area and shall not pertain to other areas of the Property, any other property owned by the Grantor, or the property of any other property owner in the vicinity of the Licensed Area.

5. Licensees shall not use the Licensed Area for any purpose other than the purposes set forth in this Agreement.

6. In the event the City reconstructs, widens, changes, or improves Buffalo Drive and the reconstruction, widening, changing, or improving would necessitate relocation of the

Licensed Improvement, Licensees agrees that, upon receipt of written notice accompanied by plans for such work from the City Manager or her authorized designee, within a reasonable time and at its sole expense, Licensees shall relocate its Licensed Improvement to conform with the City's plans. The City agrees to consider granting an additional license to Licensees if deemed necessary for relocation of the Licensed Improvement.

7. It is understood and agreed that Licensees hereby assume the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Licensees, its subcontractors, agents, or employees under or in connection with this Agreement or the performance or failure to perform any work required hereunder. Licensees agree to indemnify and hold harmless the City, and its agents, volunteers, servants, employees, and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses, suffered by any indemnified party or entity as a result of claims or suits, due to, arising out of, or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Agreement, and (c) the performance of work by the Licensees or those for whom Licensees is legally liable. Upon written demand by the City, Licensees shall assume and defend at Licensees' sole expense any and all suits or defense of claims made against the City, its agents, volunteers, servants, employees, or officials.

8. Licensees acknowledges and accepts any risk of damage to the Licensed Improvement located under and along the Property which may be or has been caused from the construction or maintenance activities of the City in the vicinity of the Licensed Improvement. Licensees hereby releases, acquits, and discharges the City from any liability for damage to the Licensed Improvement by the City's contractors or by City-franchised utility companies. Further,

and without waiving the City's rights of sovereign immunity or any defenses available to municipal corporations, nothing contained herein shall constitute a release of any claim or cause of action which Licensees may have resulting from damages to the Licensed Improvement which is caused by the gross negligence of the City or its agents, volunteers, servants, employees, and officials.

9. Licensees shall maintain at its expense throughout the term of this Agreement, general liability insurance covering the Licensed Improvement in an amount at least equal to the current liability coverage in Licensees' Parcel. Such insurance shall be with a company satisfactory to the City. Any deductible provision of said insurance shall be subject to the approval of the City Attorney's Office. Such insurance specifically shall insure the Licensees against all liability assumed by it under the terms of this Agreement and the license granted hereunder as well as any liability imposed by law and shall insure both the City and Licensees but shall be so endorsed as to create the same liability on the part of the insurer as if separate policies had been written for the City and Licensees. Licensees shall provide the City's Risk Management Administrator with a Certificate of Insurance naming the City as an additional insured, which shall be in a form satisfactory to the City and the City Attorney's Office. Licensees shall provide the City's Risk Management Administrator the Insurance Certificate annually without demand. Each insurer mentioned in this section shall agree by endorsement on the policy or policies issued by it or by independent instrument furnished to the City that it will give the City at least 30 days' written notice before the policy or policies in question shall be altered or cancelled.

10. Pursuant to Hampton City Code §34-86(f) this Agreement and the license granted herein is neither transferable nor assignable.

11. Any notice, communication, or request under this Agreement by the City or Licensees shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next business day service), or (c) hand delivery if receipt is evidenced by a signature of the addressee or authorized agent, and addressed to the applicable parties as follows:

As to Grantor: City of Hampton, Virginia  
Director of Public Works Fourth Floor  
22 Lincoln Street  
Hampton, VA 23669

Copy to: City of Hampton  
City Attorney's Office Eighth Floor  
22 Lincoln Street  
Hampton, VA 23669

As to Licensees: Bonner M. and Heather N. Secrest  
51 Buffalo Avenue  
Hampton, VA 23664

Either party may change its address for notice purposes by giving written notification thereof to the other party, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

12. Licensees shall pay all required sums hereunder, if any, in the amount and at the times and in the manner herein provided and shall keep and perform all terms and conditions hereof on its part to be kept and performed.

13. Failure of the City to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed a waiver of such term, covenant, or condition herein contained.

14. The covenants and conditions contained herein, subject to the provisions as to assignment, transfer, or subletting, shall apply to and bind the heirs, successors, executors,

administrators, and assigns of all parties hereto; and all parties shall be jointly and separately liable hereunder.

15. Termination and Revocation. In addition to any other method prescribed herein, the Licensees may terminate and the City Council may revoke this Agreement as follows:

- A. Licensees may terminate this Agreement and any rights and obligations granted herein at any time upon 30 days' written notice to the City delivered pursuant to the provisions of Section 11. Licensees shall comply with any reasonable conditions imposed by the City regarding said termination, including but not limited to removal of the Licensed Improvement, as those conditions may be determined by the City Manager, in consultation with the Director of Public Works.
- B. City Council may revoke this Agreement for any reason upon delivery to Licensees 30 days' written notice of revocation to be delivered pursuant to the provisions of Section 11. For this purpose, the City Council hereby delegates to the City Manager any and all rights to revoke or otherwise terminate this Agreement as provided herein.
- C. At the expiration or sooner termination of this Agreement or the revocation of the license granted for any reason, Licensees shall peacefully and quietly surrender to the City the rights granted hereunder. Licensees shall remove the Licensed Improvement at the written request of the City Manager to Licensees after the termination or expiration of this Agreement or the revocation of the license granted thereunder. In the event Licensees have not removed the Licensed Improvement within 30 days of receipt or deemed receipt of the City Manager's

written request to remove the Licensed Improvement, the Licensed Improvement shall become the property of the City, with the City reserving the right to remove the Licensed Improvement; and the expense of said removal to be paid by Licensees which shall be collected in the same manner as real estate taxes are collected if not paid by Licensees.

16. This Agreement is a Virginia contract deemed executed and accepted in the City of Hampton; and any and all questions with respect to any of the provisions herein shall be instituted, maintained, and contested in a court of competent jurisdiction in the City of Hampton, Virginia. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia, without regard to choice of laws.

17. In the event Licensees are for any reason or through any cause are in default under any of the terms of this Agreement, the City shall give Licensees written notice of such default by certified mail, return receipt requested, at the address set forth in Paragraph No. 11 of this Agreement. Unless otherwise provided, Licensees shall have 10 days from the date such notice is deemed given in Paragraph No. 11 above in which to cure the default, provided, however, that if it is impossible to cure such default within 10 days, the cure period provided herein shall be extended as long as Licensees are making a good faith effort to effect such cure and proves such good faith effort to the satisfaction of the City. Upon Licensees' failure to cure the default, the City immediately may cancel and terminate this Agreement which operates as a revocation of the license granted thereunder as of the mailing date of the default notice. Upon termination, the Licensees shall cease performance of any further activities under the Agreement.

18. This Agreement is entered into based upon the information given by the Licensees on and with the Encroachment Application (the "Application"), which is incorporated in and



made part of this Agreement. Licensees must advise the City in writing of any change to the information provided on or with the Application. The City may terminate this Agreement if Licensees materially misrepresented any information in the Application.

19. This Agreement contains the final and entire agreement between the parties hereto and contains all the terms and conditions agreed upon; it being the intent of the parties that neither shall be bound by any terms, conditions, or other representations not herein written.

20. The individuals executing this Agreement represent and warrant that each are duly authorized to execute it in their representative capacities as indicated, and are able to bind each respective party to perform the obligations set forth herein.

Notwithstanding the foregoing, the approval of this Encroachment Agreement by the City Council of the City of Hampton, Virginia (the "City") does not constitute governmental approval by the City of any other regulatory authority of the structure(s) and/or improvements to be installed in the encroachment area, which must also be obtained (if applicable) before any installation or construction, including, but not limited to any permit or approval that may be required for the installation of fencing.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

WITNESS the following signatures and seals as of the date first written above.

GRANTOR:

CITY OF HAMPTON, VIRGINIA

By: \_\_\_\_\_  
City Manager/Authorized Designee

COMMONWEALTH OF VIRGINIA,  
CITY OF HAMPTON, to-wit:

I hereby certify on this \_\_\_\_\_ day of May, 2019, that the foregoing Encroachment Agreement was acknowledged before me by \_\_\_\_\_, City Manager or her Authorized Designee, for the City of Hampton, Virginia. She/He is known to me personally.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
Notary Registration Number: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Katherine Glass, Clerk of Council

COMMONWEALTH OF VIRGINIA,  
CITY OF HAMPTON, to-wit:

I hereby certify on this \_\_\_\_\_ day of May, 2019, that the foregoing Encroachment Agreement was acknowledged before me by Katherine K. Glass, Clerk of Council, for the City of Hampton, Virginia. She is known to me personally.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
Notary Registration Number: \_\_\_\_\_

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

LICENSEES/GRANTEES:

By: Bonner M. Secret  
Bonner M. Secret

By: Heather N. Secret  
Heather N. Secret

COMMONWEALTH OF VIRGINIA,  
CITY OF HAMPTON, to-wit:

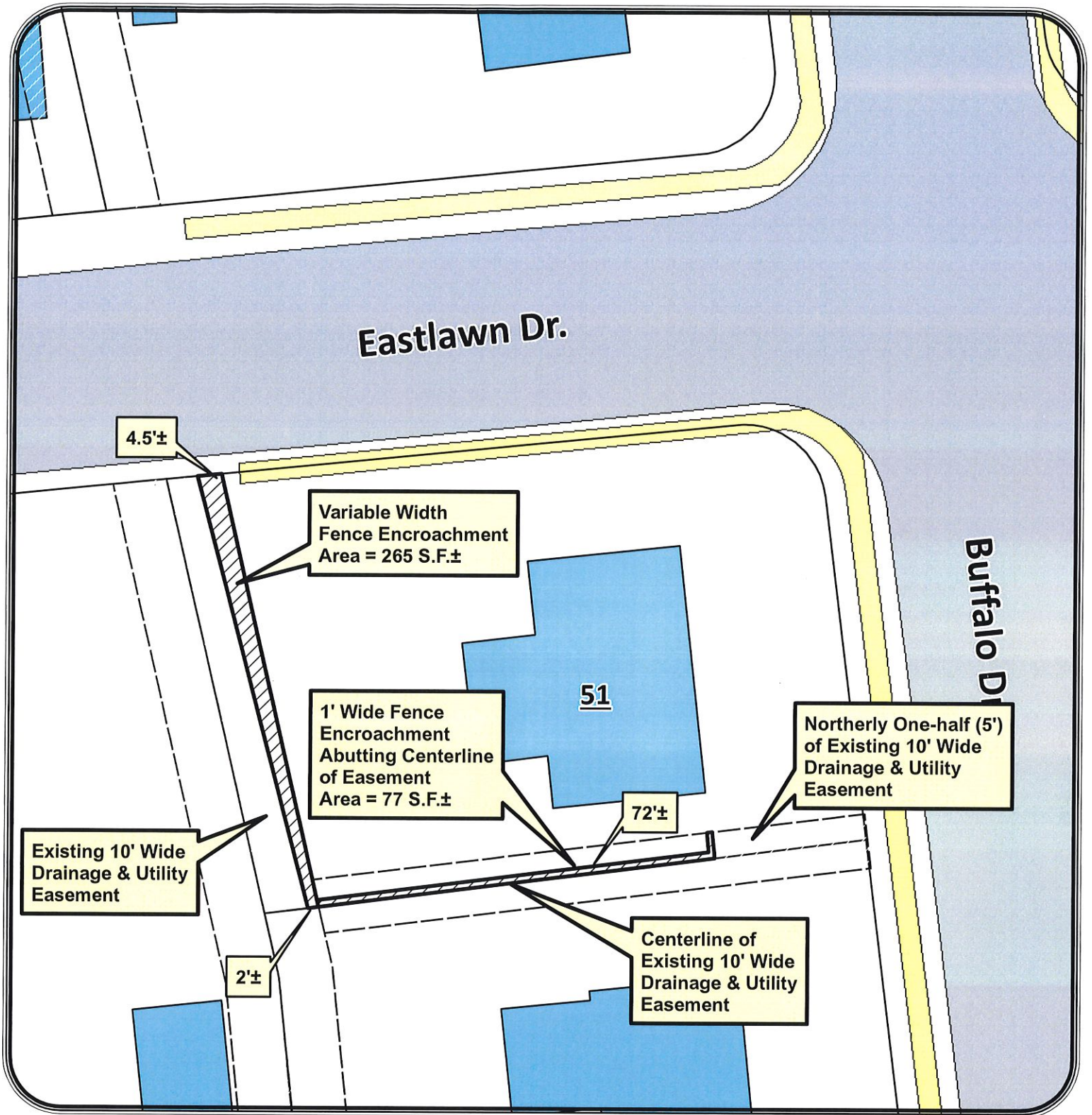
I hereby certify on this 7th day of May, 2019, that the foregoing Encroachment Agreement was acknowledged before me by Bonner M. Secret and Heather N. Secret. They are known to me personally or have provided VA. DRIVERS License as identification.

Christina E. Campana  
Notary Public

My Commission Expires: 8-31-20  
Notary Registration Number: 218896

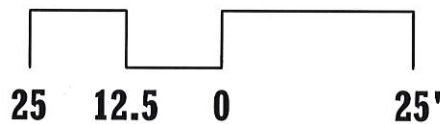


[END OF SIGNATURES]



**Exhibit Showing Encroachment  
Granted to:  
Bonner M. & Heather N. Secrest  
51 Buffalo Dr.**

**Scale: 1" = 25'**



Prepared by: CITY of HAMPTON Dept. of Public Works - Engineering Services

Map printed: 3 May, 2019

**DISCLAIMER** Although the information contained herein is believed to be reliable, no warranty, expressed or implied, is made regarding the accuracy, completeness, legality, reliability, or usefulness of any information, either isolated or in the aggregate, unless expressly specified. Neither is this information intended as a substitute for applicants' obligation to retain its own independent professional advice from an engineer, surveyor, attorney, or the like.