

ENCROACHMENT AGREEMENT

This Encroachment Agreement (hereinafter "Agreement") is made and entered into this 23rd day of FEBRUARY, 2012, by and between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia (hereinafter "City"), and **BAY BREEZE POINT HOMEOWNERS ASSOCIATION** (hereinafter "HOA").

WITNESSETH:

1. **ENCROACHMENT AREA.** City hereby grants permission to HOA to encroach into the rights of way of Pleasant Avenue and 30th Bay Street, as shown in Exhibit A attached hereto.
2. **USE.** HOA shall be permitted to occupy the Encroachment Area for the sole purpose of maintaining the landscaping, the flagpole, the electrical lighting, and any other HOA improvements within the encroachment area.
3. **TERM.** The term of the permission to encroach granted hereby shall be no longer than twenty (20) years and shall commence on the effective date of the ordinance authorizing the encroachment, and shall terminate on the date that is twenty (20) years from such date. However, it is expressly understood that the permission granted hereby is subject to the right of revocation by the City Council at any time and in their sole discretion.
4. **REPAIRS.** HOA shall keep and maintain the Encroachment Area in good and complete state of repair and condition. HOA shall, at its own cost and expense, maintain the landscaping, the flagpole, the electrical lighting, and any other HOA improvements within the Encroachment Area as may be necessary and as defined by the HOA.
5. **REQUIREMENTS OF PUBLIC LAWS.** HOA shall suffer no waste or injury to the Encroachment Area and shall comply with all applicable federal, state and municipal laws, ordinances and regulations.



6. **CITY'S RIGHT TO ENTER.** City shall retain the right to enter upon the Encroachment Area at any time. If entry upon the Encroachment Area is made by the City it shall endeavor not to remove or cause damage to facilities of or installations by the HOA.

7. **ENVIRONMENTAL MATTERS.** HOA agrees that it will not introduce onto the Encroachment Area any toxic, hazardous or dangerous materials unless such material is stored, safeguarded, or used in accordance with applicable laws and regulations. HOA hereby agrees to use and occupy the Encroachment Area in a safe and reasonable manner and in accordance with applicable law.

8. **DESTRUCTION.** If all of the encroaching improvements shall be totally destroyed or removed, the permission granted hereby shall be automatically terminated 30 days from the date of total destruction or removal unless the parties agree, in writing, to continue to permit the encroachment granted by this Agreement.

9. **NON-LIABILITY OF CITY.** City shall not be responsible for any damage to the encroaching structures, including replacement and reinstallation costs, resulting from the City's operation, maintenance, repair, or replacement of any infrastructure located within the rights of way of Pleasant Avenue and 30th Bay Street.

10. **INDEMNIFICATION.** HOA expressly agrees to indemnify, defend and hold the City harmless from and against any and all claims, loss, damage, injury, and liability, however caused, resulting from, arising out of, or in any way connected with HOA's use of the Encroachment Area.

11. **ASSUMPTION OF RISK.** By entering upon the Encroachment Area for the purposes aforesaid, HOA and its officers, agents, employees, and volunteers assume any and all risk of personal injury or property damage.

12. **ASSIGNMENT.** City and HOA agree that the permission to encroach granted hereby may not be assigned by HOA.

13. **INSURANCE.** That HOA, or its successors and assigns, at its own cost and expense, shall take out and keep in full force and effect public liability insurance in a company authorized to do business in the Commonwealth of Virginia, insuring them and naming the City of Norfolk as an additional insured party in the amount of at least \$2,000,000.00 combined single limit for bodily injury, death and property damage, or \$1,000,000.00 per person/per injury/per occurrence, and \$2,000,000.00 aggregate insuring City and HOA against all liability arising out of the use, occupancy, or maintenance of the Encroachment Area, which policy shall be endorsed as primary insurance in favor of City naming the City as additional named insured, as evidenced by a Certificate of Insurance provided to the City and filed with the Risk Manager for the City.

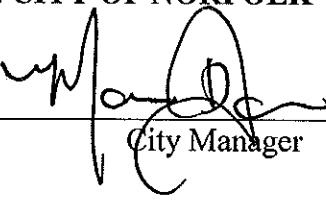
14. **LIENS OR ENCUMBRANCES.** If because of any act or omission of HOA, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against any portion of the Encroachment Area, HOA shall, at its own cost and expense, cause the same to be discharged of record or bonded within ninety (90) days after written notice from the City to HOA of the filing thereof.

15. **APPLICABLE LAW.** The permission granted by this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties have executed or have caused this Encroachment Agreement to be executed by their duly authorized officers and their seals to be hereunto affixed and attested, all as of the day and year first above written.

(SIGNATURE PAGES TO FOLLOW)

THE CITY OF NORFOLK

By: 

City Manager

ATTEST

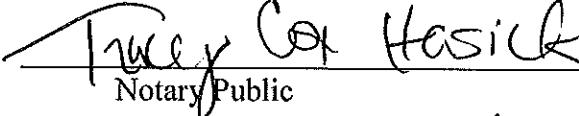


City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, Tracey Cox Hasick, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, whose term of office expires on the 30 day of April, 2014 do hereby certify that Marcus D. Jones, City Manager, or his duly authorized Assistant City Manager, and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing Encroachment Agreement have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 27 day of March, 2012.



Tracey Cox Hasick
Notary Public

Registration No. 7056195

APPROVED AS TO CONTENTS:



John Kuf
Director, Department of Public Works



APPROVED AS TO FORM
AND CORRECTNESS



Nathan D. Saman
Deputy City Attorney

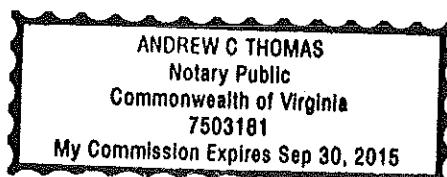
BAY BREEZE POINT HOMEOWNERS
ASSOCIATION

By: James R Casey
Title: President

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, Andrew Thomas, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, whose term of office expires on 4 30 2015, do hereby certify that James Casey, President (Title), whose name is signed on behalf of Bay Breeze Point Homeowners Association, to the foregoing Encroachment Agreement, has acknowledged the same before me in my City and State aforesaid. He/She is personally known to me or has produced a driver's license as identification.

Given under my hand this 23 day of Feb, 2012.



Andrew Thomas
Notary Public

Registration No. 7503181

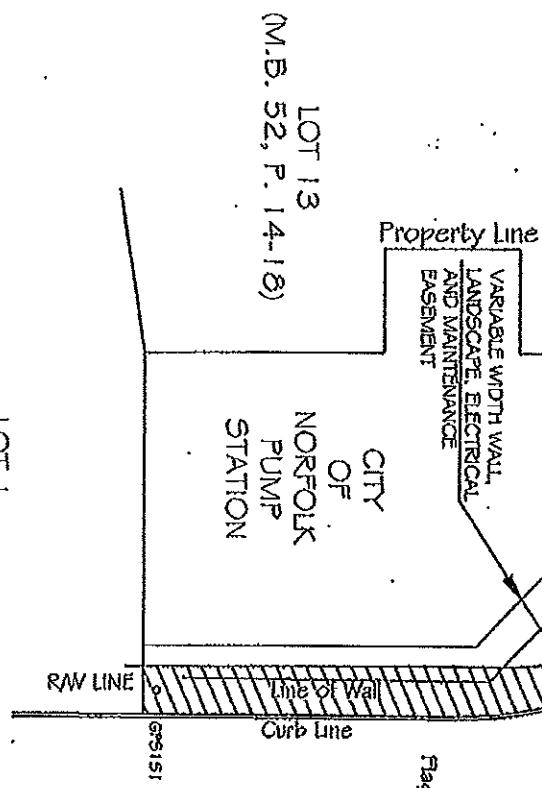
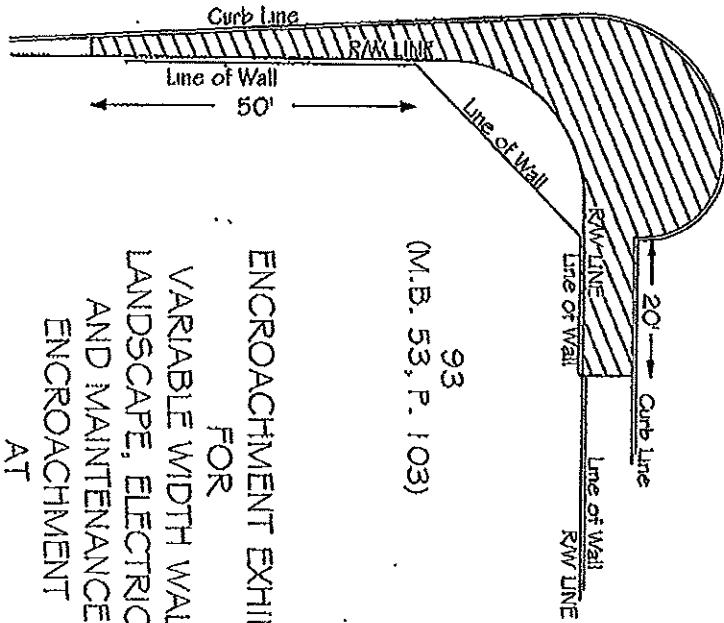
30TH BAY STREET

(45' RW)



VARIABLE WIDTH WALL,
LANDSCAPE, ELECTRICAL,
AND MAINTENANCE
ENCROACHMENT

1" = 25'

PLEASANT AVENUE
(VARIABLE RW)

ENCROACHMENT EXHIBIT
FOR
VARIABLE WIDTH WALL,
LANDSCAPE, ELECTRICAL
AND MAINTENANCE
ENCROACHMENT
AT
PLEASANT AVENUE AND
30TH BAY STREET
(M.B. 52, P. 14-18)

November, 2010
Scale: 1" = 25'