

City of Broken Arrow, Oklahoma
ENCROACHMENT AGREEMENT AND RELEASE OF LIABILITY

This Encroachment Agreement and Release of Liability for an encroachment on a Public Easement/Right-of-Way is entered into by and between the City of Broken Arrow, an Oklahoma municipality (City), and BIG STAR REAL ESTATE, LLC , (Owner).

The City owns public easements and/or rights-of-way across and upon Owners' property. Said property is more particularly described as:

Lot 2, Block 8, Stacey Lynn Fifth, a subdivision of the City of Broken Arrow, Tulsa County, Oklahoma (see Exhibit A")

(Insert the legal description and attach certified survey of **entire property**),

also known as:

1604 South Walnut Avenue, Broken Arrow, OK 74011

(Insert the street address of property).

Owner's predecessors in interest has, without the permission of the City, constructed or permitted the construction of structures or other encroachments, namely a residential dwelling upon the public easement/right-of-way on said property, described as:

the north side of the house extends 1.5 feet more or less into the ten (10) foot utility easement extending along the side yard of the property. Owner believes the easement is not in use by any utilities, with the possible exception of those necessary for providing service to the home.

(Insert the legal description and attach certified survey of entire easement/right-of-way and that portion of easement/right-of-way which has been encroached upon).

The Owner shall not construct or permit additional encroachments upon the public easement/right-of-way, and shall not alter, improve, replace or add to the existing encroachments.

The City reserves the right to require Owner to remove all encroachments from the applicable public easement and right-of-way at any time in the event that the encroached upon easement is required, in the sole judgment of the City, to be used for public purposes.

In consideration of the City's agreement to not require Owner to immediately remove all encroachments from the applicable public easement/right-of-way, Owner agrees, on behalf of Owner, Owner's family and heirs, agents, devisees, successors, grantees, and assigns (collectively referred to as "Owner") to **waive any and all claims, causes of action, for damages of any kind or nature, including but not limited to any foreseen or unforeseen personal injury (including death), property damages (including loss of use), or other losses or damages arising from the construction, repair, or maintenance of streets or utilities within the easements and right of ways,** against the City of Broken Arrow, Oklahoma, its employees, officers, agents or assigns, which may arise out of or in connection with any aspect of the encroachment upon the above described easement/right-of-way.

In consideration of the City's agreement to not require Owner to immediately remove all encroachments from the applicable public easement/right-of-way, Owner also agrees to **indemnify, defend (at the City's option), and hold harmless** the City, its employees, officials, agents, representatives and volunteers **from and against any and all causes of action (whether groundless or not), losses, liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions, or proceedings and reasonable attorney's fees, and actual damages of any kind or nature arising from the construction, repair, or maintenance of streets or utilities within the easements and right of ways, directly or indirectly arising out of or in connection with the encroachment upon the above described easements/right-of-way.**

In consideration of the City's agreement to not require Owner to immediately remove all encroachments from the applicable public easement/right-of-way, Owner also agrees to **reimburse City for any direct or indirect costs or expenses** that the City may incur as a direct or indirect result of any encroachment upon the above-described property. The presence or absence of any insurance shall not be construed as a limitation on the duties or obligations of Owner under this Agreement.

Owner shall obtain release agreements as required by all other applicable utilities companies, and shall comply with all local, state, and federal regulations and laws which may be applicable to Owner's encroachment upon the above easement/right-of-way.

OWNERS UNDERSTAND THEY MAY INCUR PERSONAL, PROPERTY, AND/OR FINANCIAL RISKS AS A RESULT OF THIS AGREEMENT, AND OWNERS AGREE TO ACCEPT THESE RISKS KNOWINGLY AND VOLUNTARILY.

Owner seeks this agreement with the City voluntarily, and acknowledges that no promises, agreements or other inducements have been made to Owner. Owner understands that the City of Broken Arrow, Oklahoma will rely on this statement, that the terms of this Agreement are contractual in nature, and this Agreement is specifically designed to protect the City of Broken Arrow, Oklahoma, its citizens, employees, officers, agents, and assigns.

This Agreement is perpetual and runs with the land forever.

I HAVE READ THE ABOVE STATEMENT AND I UNDERSTAND IT. I HAVE SOUGHT AND OBTAINED ANY AND ALL LEGAL ADVICE I NEEDED OR MAY HAVE NEEDED PRIOR TO SIGNING THIS DOCUMENT, AND I SIGN THIS DOCUMENT FREELY AND VOLUNTARILY.

Kelly Garcia Kilmer
Property Owner's Signature

Property Owner's Signature

KELLY GARCIA KILMER

Property Owner's Name (Printed)
(Printed)

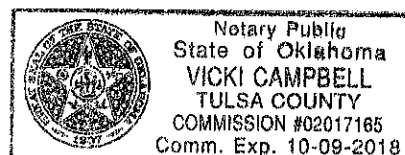
Property Owner's Name

State of Oklahoma)
County of OK) ss.

On this 30 day of April 2018 before me personally appeared Kelly Garcia Kilmer, known to me to be the person(s) named herein and who executed the foregoing **ENCROACHMENT AGREEMENT AND RELEASE OF LIABILITY**, and who acknowledged to me that he/she/they knowingly and voluntarily executed the same.

10-09-2018
My Commission Expires

Vicki Campbell
Notary Public



REV. 10/2006

Town: Broken Arrow

Description: Lot 2, Block 8, Stacey Lynn Fifth

County: Tulsa

WR#

Initials:

Date: April 12, 2018

CONSENT TO ENCROACHMENT

STATE OF OKLAHOMA §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TULSA §

THIS CONSENT TO ENCROACHMENT is made this 12th day of April, 2018, by and between Big Star Real Estate LLC, whose address is 1604 S Walnut Ave., Broken Arrow, OK ("Present Owners"), whether one or more persons, and **PUBLIC SERVICE COMPANY**, an Oklahoma corporation, with an address of 212 E. 6th Street, Tulsa, Oklahoma, 74119 ("PSO").

WITNESSETH:

WHEREAS, a parcel of real estate with a street address of 1604 S Walnut Ave., located in Tulsa County, Broken Arrow, Oklahoma (the "Property") as shown on Exhibit A, attached hereto and made a part hereof for all purposes, is subject to [*a platted utility easement as shown on the recorded Subdivision plat filed in the Official Public Records of Tulsa County, Oklahoma*] (the "Easement" or collectively, *the Easement*),

WHEREAS, PSO is a public utility licensed to do business in the State of Oklahoma and in the City of Tulsa, Oklahoma, and has the right to use the Easement to construct electric lines and all necessary appurtenances, together with rights to enter on the Property and replace, inspect, repair, and maintain on the Property all lines, poles, towers, cables, conduits and all other appurtenances as needed by PSO; and,

WHEREAS, the Present Owners have recently constructed house upon and over a portion of the easement area (the "Encroachment"), which encroaches into the Easement as shown in Exhibit A and which encroachment infringes on PSO's rights; and,

WHEREAS, the Encroachment is a compatible encroachment that does not violate the provisions of the National Electrical Safety Code; the Present Owners have agreed not to create any further encroachments; and PSO has agreed to consent to the Encroachment upon the Present Owners' agreement to certain terms and conditions as more fully set out below.

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable consideration, PSO does hereby grant, without warranty and only to the extent it has the right to do so, unto the Present Owners of record and their heirs and assigns, PSO's Consent to the Encroachment. The execution of this Consent to Encroachment by the undersigned is not to be construed in any manner as a license for further encroachment on the easement area. This Consent to Encroachment shall automatically terminate and be rendered null and void upon any removal of the Encroachment. Changes in the physical shape or size of the Encroachment shall be considered an additional encroachment without authority and in violation of PSO's legal rights and interests.

The Encroachment is subject and subordinate at all times to PSO's paramount rights to use the Easement for all public utility and corporate purposes, and PSO's right to enter upon the Property at any time and from time to time for the purpose of constructing and installing, maintaining, repairing and operating electric lines and any and all equipment and facilities it deems necessary or advisable in its public utility and corporate purposes, all without any liability whatsoever on the part of PSO to the Present Owners of record, their respective heirs, administrators, executors, successors and/or assigns.

THE PRESENT OWNERS OF RECORD OF THE ABOVE DESCRIBED PARCEL OF REAL ESTATE, THEIR RESPECTIVE HEIRS, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS, SHALL INDEMNIFY AND SAVE HARMLESS PSO, ITS PARENT AND SUBSIDIARY COMPANIES, AND THEIR SUCCESSORS, ASSIGNS, DIRECTORS, OFFICERS, EMPLOYEES, SERVANTS, AND AGENTS FROM ANY AND ALL CLAIMS, DEMANDS, CHARGES, SUITS OR ACTIONS FOR PROPERTY DAMAGE OR LOSS, OR LOSS OF USE THEREOF, AND PERSONAL INJURY AND DEATH, WHETHER AT LAW OR IN EQUITY, BROUGHT BY ANY PERSON, ENTITY OR AGENCY, INCLUDING BUT NOT LIMITED TO EMPLOYEES OR AGENTS OF THE PRESENT OWNERS AND ALL EXPENSES OF LITIGATION INCLUDING BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND LITIGATION EXPENSES, ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE USE, CARE, OR MAINTENANCE OF THE ENCROACHMENT.

In the event any such proceeding should be filed, Present Owners agree that PSO shall have the right to select counsel to defend such proceeding, and the Present Owners shall make payment of any and all court costs, expenses of litigation, reasonable attorneys' fees and any judgments that may be entered therein.

This consent in no way relieves Present Owners of record, their heirs, administrators, executors, successors, and assigns, from the restrictions, if any, to which the Property is made subject by deed or otherwise and the restrictions contained in all applicable zoning ordinances.

IN WITNESS WHEREOF, the undersigned Present Owners have agreed to the terms and conditions of this Consent to Encroachment as evidenced by their signature hereto, and thus PSO has caused this instrument to be executed on its behalf on this 10th day of April, 2018.

PUBLIC SERVICE COMPANY OF OKLAHOMA

By: 

Tyler Devereux, Region Support Supervisor

PRESENT OWNER(S):

By: 

Big Star Real Estate LLC

STATE OF OKLAHOMA §
COUNTY OF TULSA §

This instrument was acknowledged before me this day of , , by Stuart Solomon,
President and Chief Operating Officer, for PUBLIC SERVICE COMPANY OF OKLAHOMA, an Oklahoma
corporation, on behalf of the corporation.

WITNESS my hand and Notarial Seal the day and year first above written.

Notary Public

STATE OF OKLAHOMA §
COUNTY OF TULSA §

This instrument was acknowledged before me this day of , , by
Kelly Garcia Kilmer, Manager of Big Star Real Estate, LLC

WITNESS my hand and Notarial Seal the day and year first above written.



Kim Walls
Notary Public

AFTER RECORDING, PLEASE RETURN TO:

PUBLIC SERVICE COMPANY OF OKLAHOMA
Lisa Goodman, Right of Way Agent
212 E 6th Street
Tulsa, Oklahoma 74119

The Encroachment is subject and subordinate at all times to PSO's paramount rights to use the Easement for all public utility and corporate purposes, and PSO's right to enter upon the Property at any time and from time to time for the purpose of constructing and installing, maintaining, repairing and operating electric lines and any and all equipment and facilities it deems necessary or advisable in its public utility and corporate purposes, all without any liability whatsoever on the part of PSO to the Present Owners of record, their respective heirs, administrators, executors, successors and/or assigns.

THE PRESENT OWNERS OF RECORD OF THE ABOVE DESCRIBED PARCEL OF REAL ESTATE, THEIR RESPECTIVE HEIRS, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS, SHALL INDEMNIFY AND SAVE HARMLESS PSO, ITS PARENT AND SUBSIDIARY COMPANIES, AND THEIR SUCCESSORS, ASSIGNS, DIRECTORS, OFFICERS, EMPLOYEES, SERVANTS, AND AGENTS FROM ANY AND ALL CLAIMS, DEMANDS, CHARGES, SUITS OR ACTIONS FOR PROPERTY DAMAGE OR LOSS, OR LOSS OF USE THEREOF, AND PERSONAL INJURY AND DEATH, WHETHER AT LAW OR IN EQUITY, BROUGHT BY ANY PERSON, ENTITY OR AGENCY, INCLUDING BUT NOT LIMITED TO EMPLOYEES OR AGENTS OF THE PRESENT OWNERS AND ALL EXPENSES OF LITIGATION INCLUDING BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND LITIGATION EXPENSES, ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE USE, CARE, OR MAINTENANCE OF THE ENCROACHMENT.

In the event any such proceeding should be filed, Present Owners agree that PSO shall have the right to select counsel to defend such proceeding, and the Present Owners shall make payment of any and all court costs, expenses of litigation, reasonable attorneys' fees and any judgments that may be entered therein.

This consent in no way relieves Present Owners of record, their heirs, administrators, executors, successors, and assigns, from the restrictions, if any, to which the Property is made subject by deed or otherwise and the restrictions contained in all applicable zoning ordinances.

IN WITNESS WHEREOF, the undersigned Present Owners have agreed to the terms and conditions of this Consent to Encroachment as evidenced by their signature hereto, and thus PSO has caused this instrument to be executed on its behalf on this 10th day of April, 2018.

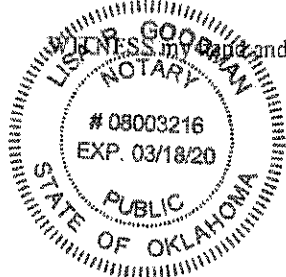
PUBLIC SERVICE COMPANY OF OKLAHOMA

By: 

Steve Baker, Vice President Distribution Region Operations

STATE OF OKLAHOMA §
COUNTY OF TULSA §

This instrument was acknowledged before me this 26th day of April, 2018, by Steve Baker, Vice President Distribution Region Operations, for PUBLIC SERVICE COMPANY OF OKLAHOMA, an Oklahoma corporation, on behalf of the corporation.



WITNESS my hand and Notarial Seal the day and year first above written.

Lisa R. Goodman
Notary Public

AFTER RECORDING, PLEASE RETURN TO:

PUBLIC SERVICE COMPANY OF OKLAHOMA
Lisa Goodman, Right of Way Agent
212 E 6th Street
Tulsa, Oklahoma 74119

Oklahoma Natural Gas Company, Utility Owner

Approved as to Substance by: (Please Print)

Name Title Date

Please Sign: _____

AEP/PSO Company of Oklahoma, Utility Owner

Approved as to Substance by: (Please Print)

Name Title Date

Please Sign: _____

Valor Telephone Company, Utility Owner

Approved as to Substance by: (Please Print)

Angela Rabe Operations 4/12/18
Name Title Date

Please Sign: [Signature]

Cox Communication Cable, Utility Owner

Approved as to Substance by: (Please Print)

Name Title Date

Please Sign: _____

Oklahoma Natural Gas Company, Utility Owner

Approved as to Substance by: (Please Print)

Name Title Date

Please Sign: _____

AEP/PSO Company of Oklahoma, Utility Owner

Approved as to Substance by: (Please Print)

Name Title Date

Please Sign: _____

Valor Telephone Company, Utility Owner

Approved as to Substance by: (Please Print)

Name Title Date

Please Sign: _____

Cox Communication Cable, Utility Owner

Approved as to Substance by: (Please Print)

Justin Rich ROW AGENT 4-12-18
Name Title Date

Please Sign: _____

Approved as to Form:

Approved as to Substance:

Assistant City Attorney

Mayor

Dated: _____

Attested by:

City Clerk

Exhibit "A"

REGISTERED LAND SURVEYOR'S
MORTGAGE INSPECTION REPORT

THIS PROPERTY IS LOCATED IN ZONE X (UNSHADED) PER FLOOD INSURANCE
RATE MAP # 400237 0387 L, EFFECTIVE OCTOBER 18, 2012.
ZONE X (UNSHADED): AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD PLAIN.

LENDER:

First Oklahoma Bank

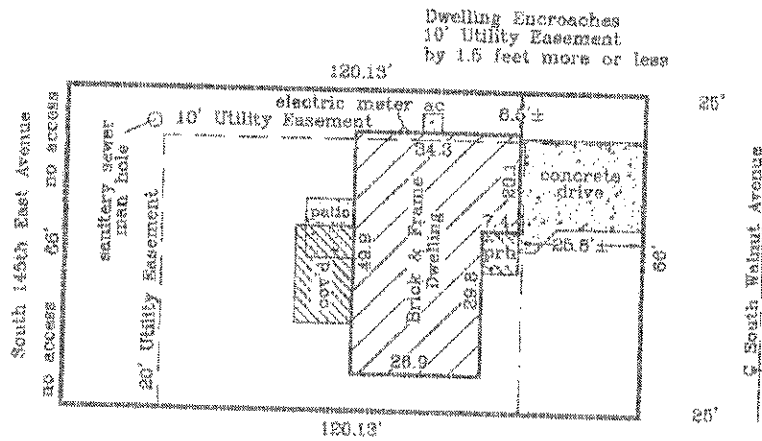
Borrower:

Red Dirt Real Estate, LLC

ORDERED BY:

Main Street Title Company, LLC

SCALE
1"=30'



LEGAL DESCRIPTION

Lot Two (2), Block Eight (8), STACEY LYNN FIFTY, an Addition to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

1604 South Walnut Avenue, Broken Arrow, OK 74012

EASEMENTS

Easements shown per recorded Plat.

No additional easements per Title Commitment No. MT0000110, Dated March 15, 2018, as provided to surveyor.

CERTIFICATION

This Mortgage Inspection Report was prepared for Main Street Title Company, LLC and First Oklahoma Bank. It is not a land or boundary survey plat, and it is not to be relied upon for the establishment of fence, building or other future improvement lines. The accompanying sketch is a true representation of the conditions that were found at the time of the inspection, March 14, 2018, and the linear and angular values shown on the sketch, if any, are based on record or deed information and have not been verified unless noted.

Signed this 21st day of March, 2018.

TIMOTHY L. KING, RPLS
36925 S. CASE ROAD
INOLA, OKLAHOMA 74038
TEL: 918-543-1899

Timothy L. King
TIMOTHY L. KING RPLS #1434



2018-0237