

**ORDINANCE NO. 23-193**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A LICENSE AGREEMENT WITH ALPHA OMEGA DEVELOPMENT COMPANY, LLC (D.B.A. TONY'S), TO PROVIDE FOR THE USE OF A CERTAIN PORTION OF THE CITY'S RIGHTS-OF-WAY AS DESCRIBED IN THE GRANT OF A LICENSE FOR ENCROACHMENT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, certain property of the City is currently platted as City right-of-way including the property identified and more fully described in Exhibit "A"; and

**WHEREAS**, Alpha Omega Development Company, LLC, is the owner of the property located at 115 & 117 W. Water Street, operating as Tony's, and for the past few years has obtained a temporary outdoor dining permit to operate their outdoor dining area, known as The Dugout, at the rear of their property abutting the Shoreline Drive right-of-way; and

**WHEREAS**, this proposed License for Encroachment will allow the property owner, Alpha Omega Development Company, LLC, d.b.a. Tony's, to operate their outdoor dining area known as The Dugout, outside the City's temporary permit time period for outdoor dining; and

**WHEREAS**, a Certificate of Appropriateness has been issued by the Department of Community Development for the existing patio; and

**WHEREAS**, this City Commission, under powers of Local self-government granted to the City by Article XVIII of the Ohio Constitution and Section 3 and Section 25 of the Charter of the City of Sandusky, has the power to change the use of City property to a use that would be of greater benefit and use to the public; and

**WHEREAS**, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to immediately execute the Grant of a License for Encroachment and allow the outdoor dining area to be utilized past the temporary permit expiration date of October 31, 2023; and

**WHEREAS**, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Department of Public Works, of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:**

Section 1. The City Manager is authorized and directed to enter into the Grant of a License for Encroachment Agreement with Alpha Omega Development

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Company, LLC (d.b.a. Tony's), to provide for the use of a certain portion of the City's rights-of-way, substantially in the same form as contained in Exhibit "1", which is attached to this Ordinance and is specifically incorporated as if fully rewritten herein together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the City's public purpose as set forth in the preamble hereto.

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.



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RICHARD R. BRADY  
PRESIDENT OF THE CITY COMMISSION



ATTEST:

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CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: September 25, 2023

**GRANT OF LICENSE FOR ENCROACHMENT ON THE SOUTH SIDE OF SHORELINE DRIVE RIGHT-OF-WAY**

This License Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, between the City of Sandusky, Ohio ("City") whose tax mailing address is 240 Columbus Avenue, Sandusky, Ohio 44870, and Alpha Omega Development Company, LLC ("Licensee") whose tax mailing address is 117 Water Street, Sandusky, Ohio 44870, under the following circumstances:

- A. The City of Sandusky, Erie County, Ohio, is the Owner and Trustee for the general public of the rights-of-way as defined in the Ohio Revised Code Section 4511.01(uu), including Shoreline Drive, and is more fully described in Exhibit "A" which is attached to this License Agreement and is specifically incorporated as if fully rewritten herein.
- B. Licensee is the owner in fee simple of the real estate on the north side of Water Street right-of-way and located at 115 and 117 Water Street.
- C. The Licensee desires to operate an outdoor dining facility on the rear side of the facility ("Encroachment") within the Owner's right-of-way in relation to the Licensee's property located at 115 and 117 Water Street, Sandusky, Ohio, and as more fully described in Exhibits "A" and "B" which are attached to this License Agreement and are specifically incorporated as if fully rewritten herein.
- D. The City is willing to grant to Licensee a license to maintain the Encroachment for so long as Licensee remains the owner of the property on the north side of the Water Street right-of-way and provided the Encroachment is not substantially altered and is maintained for the purpose of accommodating outdoor dining and in compliance with all legal requirements including those established for outdoor dining facilities within the City of Sandusky, State of Ohio.

**NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION PAID, THE PARTIES AGREE AS FOLLOWS:**

- 1. The City grants to Licensee the license and permission to retain and maintain the Encroachment as more fully described in Exhibits "A" and "B" which are attached to this License Agreement and are specifically incorporated as if fully rewritten herein, for so long as Licensee, or an assignee approved by the City, remains the owner of real property located at 115 and 117 Water Street, Sandusky, Ohio, and provided that the Encroachment is not substantially altered and Licensee, or approved assignee, complies with all applicable legal requirements including those established for outdoor dining facilities within the City of Sandusky, State of Ohio, and provided the Licensee ensures that the five (5) foot public walking area is clear of all debris including but not limited to snow and ice. The City grants to Licensee the right to assign this license to an assignee approved by the City. Licensee acknowledges that this grant of a license is terminable by the City in the event that Licensee, or an approved assignee, does not continue to meet these conditions;
- 2. Licensee agrees that, except for the license granted pursuant to this Agreement, Licensee makes no claim of right and has no interest or title in any part of the property and Licensee further agrees that the maintenance of the Encroachment shall not, at any time, be deemed or construed to be an adverse possession of any part of the City's right-of-way;

3. Licensee agrees to maintain the Encroachment solely at Licensee's expense for use in conjunction with Licensee's property located at 115 and 117 Water Street, Sandusky, Ohio, and further agrees to indemnify and hold harmless the City of Sandusky (it's officials, employees, boards, commissions and agents) from any and all loss, damage, expense, or liability arising from the maintenance of the Encroachment;
4. The License granted by this Agreement is subject to a permanent easement in favor of the City for maintenance of any utility lines, any irrigation lines and valves, and any other underground lines that may exist within the right-of-way Encroachment property;
5. This Agreement shall not be construed to run with the land and is only a temporary license, terminable at the will of the City in the event that Licensee, or approved assignee, does not continue to meet the conditions set forth in this Agreement.

**SIGNATURE PAGES TO FOLLOW**

IN WITNESS WHEREOF, the parties have hereunto set their hands on the dates indicated below:

SIGNED AND ACKNOWLEDGED  
IN THE PRESENCE OF:

CITY:  
CITY OF SANDUSKY

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
John Orzech, City Manager

State of Ohio    )  
                          ) ss:  
County of Erie    )

Before me a Notary Public for the State of Ohio, appeared the above named, John Orzech, City Manager of the City of Sandusky, who acknowledged that he signed the foregoing instrument and that the signing was a free act.

IN TESTIMONY WHEREOF, I have hereto subscribed my name and affixed my seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

SIGNED AND ACKNOWLEDGED  
Company, LLC  
IN THE PRESENCE OF:

LICENSEE: Alpha Omega Development

\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_

\_\_\_\_\_  
Printed Name & Title

State of Ohio    )  
                          ) ss:  
County of Erie    )

Before me a Notary Public for the State of Ohio, appeared the above named \_\_\_\_\_, \_\_\_\_\_ of Alpha Omega Development Company, LLC, who acknowledged that he signed the foregoing instrument and that the signing was a free act.

IN TESTIMONY WHEREOF, I have hereto subscribed my name and affixed my seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

Instrument prepared by:

\_\_\_\_\_  
Sarah Chiappone #0101179  
Assistant Law Director, City of Sandusky

## ENCROACHMENT DESCRIPTION

Situated in part of the southerly right of way of Shoreline Drive, Ward 1, City of Sandusky, Erie County, Ohio, and being more particularly described as follows;

Commencing at an iron pin found at the intersection of the centerline of Shoreline Drive with the centerline of Jackson Street;

Thence North  $66^{\circ}-15'-12''$  East, along the centerline of Shoreline Drive, a distance of 307.91 feet to a point;

Thence South  $23^{\circ}-44'-31''$  East, a distance of 20.00 feet to a point, said point being the principal place of beginning for this description;

1. Thence North  $66^{\circ}-15'-12''$  East, a distance of 34.00 feet to a point;
2. Thence South  $23^{\circ}-44'-31''$  East, a distance of 20.00 feet to a point on the southeasterly right of way line of Shoreline Drive, being on the northwesterly line of Lot Number 62 on Water Street, being the most westerly corner of a parcel of land now or formerly owned by the Hubbard Building Condominium as per deed recorded in RN200512287 of the Erie County Record, said point also being the most northerly corner of a parcel of land now or formerly owned by Alpha Omega Development Company, LLC as per deed recorded in RN201009582 of the Erie County Records;
3. Thence South  $66^{\circ}-15'-12''$  West, along the southeasterly right of way line of Shoreline Drive and the northwesterly line of said Lot Number 62 and Lot Number 63 on Water Street, now or formerly owned by said Alpha Omega Development, LLC and being the northwesterly edge of a building, a distance of 34.00 feet to a point at the most westerly corner of said Lot Number 63, being the most northerly corner of Lot Number 64 on Water Street, now or formerly owned by Waters Edge Building, LLC as per deed recorded in RN201706242 of the Erie County Records;
4. Thence North  $23^{\circ}-44'-31''$  West, a distance of 20.00 feet to the place of beginning and containing 0.0156 acres (680.00 Sq. Ft.) of land but subject to all legal highways, easements and restrictions of record.

In the above description the courses were referred to a meridian assumed for the purpose of indicating angles only.

This description was prepared by David A. Williams, Registered Surveyor No. 7166 and was taken from an actual field survey performed on August 4, 2023.

David A. Williams



Registered Surveyor No. 7166

EXHIBIT "A"



■ M.O.U. BOX FD.

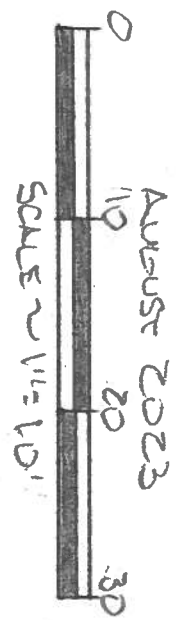
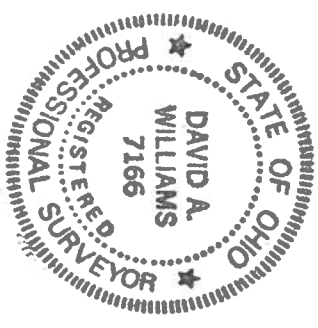
LEGEND

WATERS EDGE  
BUILDING LLC.  
RU2017062A2

ALPHA OMEGA  
DEVELOPMENT  
COMPANY  
LLC.  
RU200808502

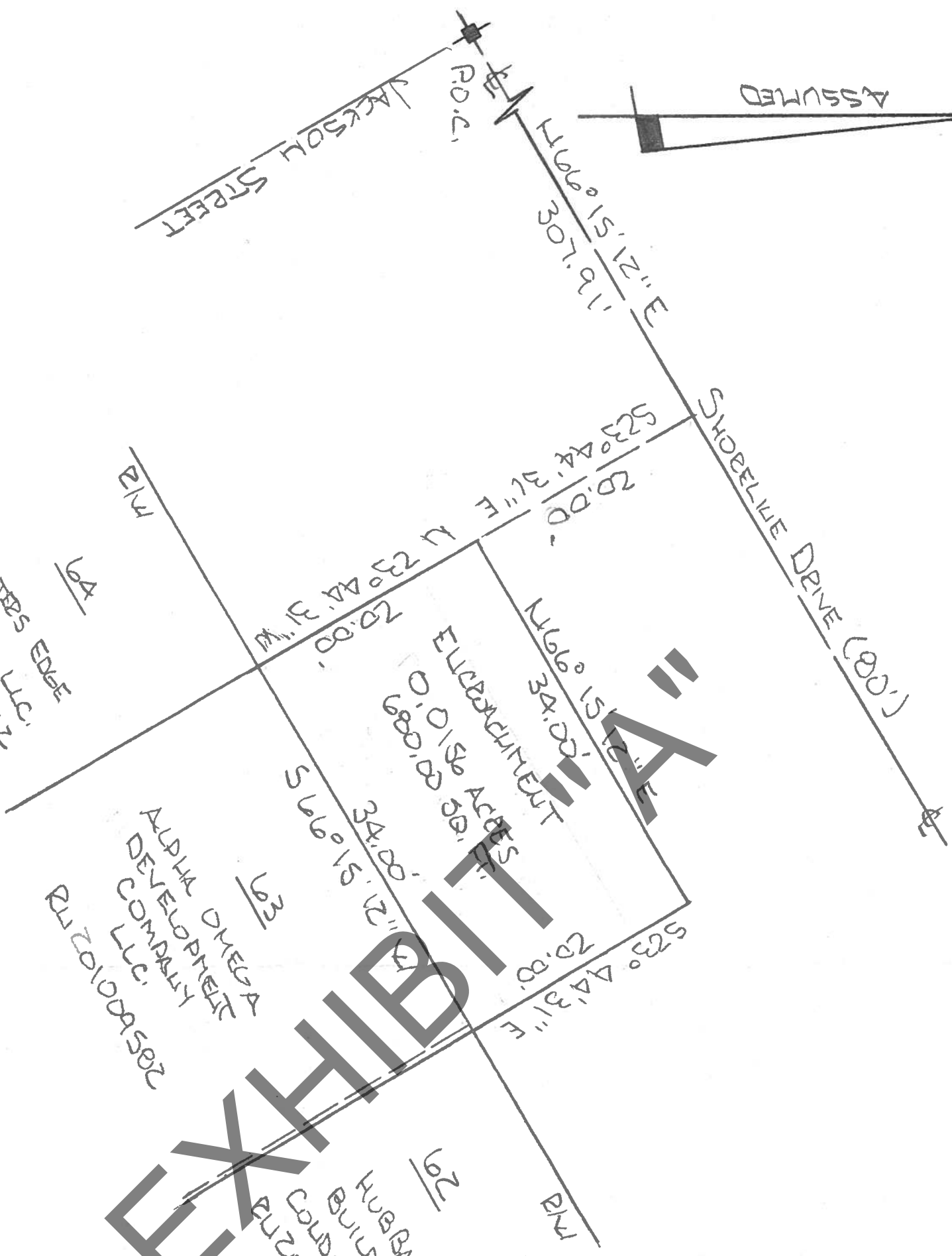
HUBBAED  
BUILDING  
CONDOMINIUM  
RU2020517207

*David A. Williams*  
DAVID A. WILLIAMS  
REG. SURVEYOR # 7166



BEING PART OF THE SOUTHERLY  
PART OF WAY OF SHOEBUE DRIVE  
WARD 1 CITY OF SANDUSKY  
ERIE COUNTY OHIO  
AUGUST 2023

PART OF A SURVEY



**EXHIBIT A**