



City of San Clemente Engineering Division

910 CALLE NEGOCIO, SUITE 100, SAN CLEMENTE, CA 92673

Phone: (949) 361-6100

Fax: (949) 366-4741

E-mail: engineering@san-clemente.org

PERMIT NO.:

DATE ISSUED:

ADMINISTRATIVE ENCROACHMENT PERMIT

PRIVATE IMPROVEMENTS WITHIN PUBLIC RIGHTS-OF-WAY, EASEMENTS, ETC.

PROPERTY ADDRESS: _____ TRACT/PM: _____ BLOCK: _____ LOT(S): _____

CROSS STREETS: _____ and _____

PROPERTY OWNER: _____ PHONE: _____

ADDRESS: _____

DESCRIPTION OF WORK: _____

PERMIT ISSUANCE:		Special Conditions:
<input type="checkbox"/> WALL/FENCE/GATE	* Per Engineering Fee Schedule	
<input type="checkbox"/> MAILBOX		
<input type="checkbox"/> HARDSCAPE	*\$ _____	
<input type="checkbox"/> STAIRS	(001-000-32340)	
<input type="checkbox"/> OTHER _____		

As a condition of the issuance of this encroachment permit, the applicant hereby agrees to the special conditions or the conditions of approval attached hereto, to comply with all city, local, state and federal requirements, standards, and policies applicable to the construction and maintenance of the encroaching structure/use, to pay for the removal and reconstruction/installation of the encroaching use if City concluded that the encroaching structure or use fails to comply with all applicable requirements, and to remove the encroaching structure/use at applicant's sole cost and expense should City conclude in its sole and absolute discretion that such removal is appropriate.

The owners guarantee to save, indemnify and hold harmless the City of San Clemente and all its agencies, officers, employees and officials against all liabilities, judgments, costs and expenses which may in any manner or form arise in consequence of the issuance of this permit or any work performed in consequence thereof.

SIGNATURE: _____ DATE: _____

PRINT NAME: _____
Property Owner

PLANNING DIVISION ACTION: _____

PLANNING DIVISION STAFF: _____ DATE: _____

APPROVED BY: _____ DATE: _____
City Engineer

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of San Clemente
100 Avenida Presidio
San Clemente, CA 92672
Attn: City Clerk

Space above this line for Recorder's Use

This Agreement is recorded at the request and for the benefit of the City of San Clemente, California, and is exempt from the requirement for payment of recording fees pursuant to Government Code Sections 6103 and 27383.

**AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY
(ADMINISTRATIVE ENCROACHMENT PERMIT)**

This AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY (ADMINISTRATIVE ENCROACHMENT PERMIT) (the "Agreement") is dated for reference purposes only as of the ____ day of _____, 20__ (the "Effective Date"), and is entered into by and between _____, a _____ ("Owner"), and the CITY OF SAN CLEMENTE, a municipal corporation ("City"). Owner and City are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS:

A. Owner is the owner in fee of that certain real property located at [*insert street address*] in the City of San Clemente, County of Orange, State of California, and more particularly described in Exhibit "A" attached hereto ("Owner's Property").

B. City is the owner of an easement and/or public right-of-way on, over, under, and across a portion of the Owner's Property described generally as follows: _____ [*insert description of City property interest*] (the "City Property").

C. Pursuant to San Clemente Municipal Code Sections 12.20.015-12.20.020, any person who desires to construct, install, or maintain any improvements on City property or within a City easement or right-of-way must apply for and obtain an administrative encroachment permit.

D. On July 25, 2006, the City Council of the City adopted Resolution No. 06-51 authorizing the City Manager or his/her designee to enter into written agreements with property owners to authorize encroachments granted pursuant to the City's administrative encroachment permit process.

E. Pursuant to Municipal Code Sections 12.20.015-12.20.020 and Resolution No. 06-51, Owner has applied to City for an administrative encroachment permit to allow certain private improvements to be constructed, installed, and/or maintained within the City Property, as depicted or described in Exhibit "B" to this Agreement (the "Owner's Improvements"). On _____, 20___, City approved said encroachment permit for the Owner's Improvements (the "Encroachment Permit") subject to the condition or requirement that Owner and City execute and record this Agreement against the Owner's Property.

C O V E N A N T S:

Based upon the foregoing Recitals, which are incorporated into this Agreement by this reference, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both Parties, Owner and City agree as follows:

1. Owner's Right to Construct, Install, and Maintain Owner's Improvements on City Property. Subject to all of the other terms and conditions set forth in this Agreement, City hereby grants to Owner a revocable, non-exclusive license to enter onto the City Property to construct, install, and maintain the Owner's Improvements. Owner shall at all times construct, install, and maintain the Owner's Improvements in strict conformity with all applicable federal, state, and local laws, regulations, and official policies, with any and all conditions set forth in the Encroachment Permit (a copy of which is a public record available for inspection during normal business hours in the office of the City Clerk located at 100 Avenida Presidio, San Clemente, California, 92672), and with the terms of this Agreement, including without limitation Exhibit "B" hereto. If any of the Owner's Improvements are located within a public street right-of-way, Owner shall not allow any of the Owner's Improvements or any persons constructing, installing, maintaining, repairing, replacing, or removing the Owner's Improvements on Owner's behalf to obstruct or impair in any way vehicular travel or visibility on and along such street and Owner shall comply with and cause all of its employees, independent contractors, and agents to comply with all safety rules and regulations as may be prescribed by the City's Public Works Director or his/her designee. Owner shall not in any way damage any City improvements on or adjacent to the City Property and, if any such damage occurs as a result of any acts or omissions of Owner or any employee, independent contractor, or agent of Owner, Owner shall promptly repair said damage to the satisfaction of the City's Public Works Director or his/her designee and restore said City improvements as nearly as practicable to the condition existing immediately prior to such damage. Owner shall have no right to expand, enlarge, or otherwise alter the Owner's Improvements in a manner inconsistent with or beyond the scope of City's initial approval of same. If Owner desires to expand, enlarge, or otherwise alter the Owner's Improvements in such manner, Owner shall first be required to obtain the written approval of City's Public Works Director or his/her designee, which approval may be withheld in City's sole and absolute discretion. In the event City's approval for an expansion, enlargement, or alteration to the Owner's Improvements is obtained, the Parties agree to execute an appropriate amendment to

this Agreement to depict or describe the change and to record said amendment against the Owner's Property, and at such time all references in this Agreement to the "Owner's Improvements" shall be deemed to refer to the Owner's Improvements as so expanded, enlarged, or altered.

Owner shall at all times maintain the Owner's Improvements in good condition and repair (including without limitation repainting of any painted surfaces and removal of graffiti, if applicable) and Owner shall maintain the immediate area in a neat, tidy, and clean condition, free of any refuse and debris. In the event that any of the Owner's Improvements consist of landscaping, Owner shall maintain said landscaping in a healthy condition, Owner shall promptly remove or replace any diseased or dead landscaping, and Owner shall prune or trim said landscaping in order to avoid or eliminate any potential traffic hazards on adjacent roadways. Not by way of limitation of the foregoing, if any roots from any landscaping installed or maintained by Owner cause any damage to any City street, curb, gutter, sidewalk, storm drain facility, pipeline, or other improvement, Owner shall promptly repair such damage and replace any damaged City improvement promptly upon City's written demand. In addition, Owner at all times shall maintain any portion of the Owner's Improvements consisting of irrigation lines, valves, and other equipment so as to conserve the use of water, prevent erosion, and contain runoff within the Owner's Property (and to avoid runoff onto adjacent City streets and storm drains).

2. City Right to Expand, Enlarge, or Alter City Improvements. Notwithstanding the rights granted to Owner hereunder, City reserves the right to expand, enlarge, alter, maintain, repair, replace, and relocate any City-owned improvement on, over, under, or across the City Property and any adjacent City easement or right-of-way at any time, without any obligation or liability to Owner to repair or restore any damage that may be caused to any of the Owner's Improvements.

3. No Property Interest. The Encroachment Permit and this Agreement are not intended to and do not convey to Owner or create any interest in the City Property. This Agreement is intended as a non-exclusive and revocable license only.

4. No License Fee. Owner's rights set forth in this Agreement are conditional and contingent upon Owner having paid to City any and all fees required to obtain the Encroachment Permit. Otherwise, however, Owner shall not be required to pay any license fee or similar consideration to City except as expressly set forth herein.

5. Term; Termination and Revocation of Encroachment Permit and Agreement. This Agreement shall be of indefinite duration and shall be effective from the date this Agreement is fully executed and recorded against the Owner's Property until the date this Agreement is terminated by either Party or revoked by the City.

Either Party shall have the right to terminate the Encroachment Permit and this Agreement, with or without cause, by delivery of written notice to the other Party. Prior to any termination by Owner becoming effective, Owner shall remove any Owner's Improvements from the City Property, repair any damage caused by the Owner's Improvements or removal of same

to the City Property, and restore the City Property as nearly as practicable to the condition existing immediately prior to the termination date.

Subject to the next paragraph hereinbelow, if City delivers written notice to Owner of City's decision to terminate the Encroachment Permit and this Agreement, said termination shall be effective within thirty (30) days after the date of said notice. Within said thirty (30) day period, Owner shall remove all of Owner's Improvements from the City Property, repair any damage caused to the City Property by Owner's Improvements and/or the removal of same, and restore the City Property as nearly as practicable to the condition existing immediately prior to the termination date.

In addition to the foregoing, in the event Owner violates any of the terms or conditions set forth in the Encroachment Permit or this Agreement, City shall have the right upon delivery of written notice to Owner to revoke the Encroachment Permit and this Agreement on shorter notice than thirty (30) days or no notice at all. In such event, Owner shall immediately remove all of Owner's Improvements from the City Property, repair any damage caused to the City Property by Owner's Improvements and/or the removal of same, and restore the City as nearly as practicable to the condition existing immediately prior to the revocation date.

Upon termination or revocation of the Encroachment Permit and this Agreement, neither Party shall have any further rights or obligations under this Agreement, subject to the following exceptions: (i) Owner's obligation to remove the Owner's Improvements and repair and restore any damage to the City Property, as set forth hereinabove, shall survive the effective date of any such termination or revocation; (ii) in the event Owner fails to timely remove any of the Owner's Improvements and/or repair and restore any damage to the City Property City reserves its legal remedies as set forth in Section 6 hereinbelow, including the right to recover from Owner City's actual out-of-pocket costs, plus administrative charges and interest, to effectuate said work; and (iii) Owner's release of liability and the rights of the City Indemnitees as set forth in Section 7 hereinbelow shall survive any such termination or revocation.

6. City Remedies. If City determines that Owner is not maintaining any of the Owner's Improvements in accordance with the Encroachment Permit or this Agreement or if City determines that Owner has not timely removed any unauthorized Owner's Improvements or repaired any damage to the City Property and restored the City Property in accordance with the Encroachment Permit or this Agreement, City shall have the right to deliver written notice to Owner stating in reasonable detail what maintenance, repair, or improvement work is required. If Owner thereafter fails to perform such work within a reasonable period, not to exceed thirty (30) days from the date of City's notice, City reserves the right, in addition to any other rights and remedies it may have hereunder or pursuant to applicable law, to enter onto the City Property, perform said maintenance, repair, improvement, or removal work itself, in which event Owner shall be responsible for reimbursing City for all of City's actual out-of-pocket costs (including payroll costs for work performed by City employees) plus an administrative charge of fifteen percent (15%). In addition, if Owner fails to pay any City invoice for said work within thirty (30) days after written notice from City, Owner shall additionally be liable to pay City interest on the delinquent payment at the rate of ten percent (10%) per annum or the maximum interest rate permitted by law, whichever is less.

City's rights set forth in this Section 6 shall survive a termination or revocation of the Encroachment Permit and this Agreement.

7. As-Is Condition; No City Representations and Warranties Regarding Condition of City Property; Release and Indemnity. Owner acknowledges and agrees that City is making no representations or warranties to Owner regarding the physical condition of the City Property, the existence of any patent or latent defects in the City Property or the location, condition, or other characteristics of any improvements situated on, over, or under the City Property, or the suitability of the City Property for Owner's intended use or any of the Owner's Improvements to be located thereon, and Owner assumes the full risk with respect thereto. Owner hereby releases City from any and all claims, liabilities, and losses that may be incurred by Owner with respect to the construction, installation, maintenance, repair, improvement, replacement, and removal of the Owner's Improvements, including any personal injury or death, property damage, or economic loss arising therefrom, and City shall have no liability therefor.

In addition to the foregoing, Owner agrees to indemnify, defend, and hold harmless City and City's elected and appointed officials, employees, and agents (collectively, the "City Indemnitees") from and against any and all claims, liabilities, and losses arising out of Owner's construction, installation, maintenance, repair, improvement, replacement, and removal of any of the Owner's Improvements and use of the City Property, including without limitation claims for personal injury or death, property damage, and economic loss, and including without limitation fines and penalties and attorney's fees and costs. In the event that any claim is made by any third party against any of the City Indemnitees, City agrees to promptly tender said claim to Owner and thereafter Owner shall defend said claim with counsel reasonably acceptable to City. City agrees to cooperate reasonably in the defense of any said claim, provided that Owner shall promptly reimburse City for any City out-of-pocket costs incurred with respect thereto, including without limitation payroll costs at the applicable City rates for any time reasonably expended by City employees in assisting with said defense.

City's rights set forth in this Section 7 shall survive a termination or revocation of the Encroachment Permit and this Agreement.

8. Miscellaneous.

8.1 Notices. Any notices required to be delivered by one Party to the other Party pursuant to the terms of this Agreement shall be in writing. Notices shall be deemed effective if personally served in the manner authorized in the California Code of Civil Procedure for the service of lawsuits or by mail delivered by United States mail, first class, postage prepaid, to the following addresses: (i) for Owner, the address of Owner's Property; and (ii) for City, the City Hall address (with notices directed to the attention of the City Manager and the City Attorney).

8.2 No Third Party Beneficiaries; Successors and Assigns. Notwithstanding any other provision set forth in this Agreement to the contrary, nothing herein is intended to create any third party beneficiaries to this Agreement (with the exception of the rights set forth in Section 7 hereof benefiting the City Indemnitees other than City), and no person or entity other than Owner, City, and the City Indemnitees, and the permitted successors and assignees of any of them, shall be authorized to enforce the provisions set forth in this Agreement. This Agreement is intended to benefit and be binding upon Owner and any successor or assignee of Owner's fee title to the owner's Property.

"Owner"

Date: _____, 20__

_____,
a _____

By: _____

Its: _____

"City"

CITY OF SAN CLEMENTE,
a municipal corporation

Date: _____, 20__

By: _____
City Engineer

ATTEST:

City Clerk

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____,
personally appeared _____

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature of Notary Public

(Notary Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF OWNER'S PROPERTY

[to be inserted]

EXHIBIT "B"

DESCRIPTION/DEPICTION OF OWNER'S IMPROVEMENTS

[to be inserted]