

RECORDATION REQUESTED BY:

City Clerk
City of Coronado
1825 Strand Way
Coronado, CA 92118

APN: **XXX-XXX-XX**

ENCROACHMENT PERMIT NO. **EXXXX-XX**

ENCROACHMENT MAINTENANCE AND REMOVAL AGREEMENT

An encroachment permit is hereby granted to the Permittee designated in Paragraph One, Attachment A, as the owner of the Benefited Property described in Paragraph Two, Attachment A, to encroach as detailed in the diagrams included as **Exhibit A**, as approved by the City Council of the City of Coronado on the date indicated in Paragraph Five, Attachment A. Attachment A and **Exhibit A** are hereby incorporated herein by this reference as though fully set forth at length. In consideration of the issuance of this encroachment permit, Permittee hereby covenants and agrees, for the benefit of the City of Coronado (“City”), as follows:

1. This covenant shall run with the land and be binding upon and inure to the benefit of the future owners, encumbrancers, successors, heirs, personal representatives, transferees, and assigns of the respective parties.
2. Permittee shall use and occupy the City Property only in the manner and for the purposes described in paragraph four, Attachment A.
3. By accepting the benefits herein, Permittee acknowledges title to the City Property to be in the City and waives all right to contest that title.
4. The term of this encroachment permit is indefinite and may be revoked by the City or abandoned by Permittee at any time. The City shall mail written notice of revocation to Permittee, addressed to the Benefited Property which shall set forth the date upon which the benefits of the encroachment permit are to cease.
5. City is entitled to remove all or a portion of the improvements constructed by Permittee in order to repair, replace, or install public improvements. City shall have no obligation to pay for or restore Permittee’s improvements.
6. Permittee agrees to indemnify, defend (with counsel acceptable to City) and hold the City and its officials, employees, agents, representatives, and volunteers harmless from and

against all claims, demands, costs (including attorney fees and expert costs), losses, damages, injuries, litigation, and liability arising out of or related to this encroachment permit or any use, construction, encroachment, maintenance, act, or omission by the Permittee or Permittee's agents, employees, representatives, or contractors on City Property.

7. Upon abandonment or revocation, Permittee shall, unless otherwise directed by the City and at no cost to the City, return City property to its pre-permit condition within the time specified in the notice of revocation or prior to the date of abandonment.
8. If Permittee fails to restore the City property, the City shall have the right to enter upon the City Property and, after sending notice to the Permittee delivered at the Benefited Property, restore the City Property to its pre-permit condition, which includes, but is not limited to, the destruction and removal of any improvements. Permittee agrees to reimburse the City, within thirty (30) days of a request by City, for all costs (including attorney fees and staff time) incurred by the City to send notice and restore the City Property to its pre-permit condition.
9. If either party is required to incur costs to enforce the provisions of this covenant, the prevailing party shall be entitled to full reimbursement for all costs, including reasonable attorney's fees.
10. Permittee agrees that Permittee's duties and obligations under this covenant are a lien upon the Benefited Property. Upon 30-day notice, and an opportunity to respond, the City may add to the tax bill of the Benefited Property any past-due financial obligation owing to the City by way of this covenant.
11. Permittee waives the right to assert any claim or action against the City arising out of or resulting from the revocation of this permit or the removal of any improvement or any other action or omission by the City, its officers, agents, employees, representatives, or volunteers related to or arising out of this permit, except for willful misconduct.
12. Permittee recognizes and understands that this permit may create a possessory interest subject to property taxation and that the Permittee may be subject to the payment of property taxes levied on such interest.
13. As a condition precedent to Permittee's right to go upon the City Property, this permit must first be signed by the Permittee, notarized, executed by the City and recorded with the County Recorder of the County of San Diego. The recording fee shall be paid by Permittee.
14. Permittee will maintain the encroachment at Permittee's sole expense for as long as the encroachment remains in existence.

15. Permittee shall obtain, and during the term of this permit, shall maintain a policy of general liability insurance from an insurance company authorized to do business in the State of California in an insurable amount of not less than one million (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate. The insurance policies shall remain in full force during the life of the permit, and shall not be canceled or not renewed without thirty (30) days prior written notice to the City from the insurance company. The City and its officials, employees, contractors, agents and volunteers shall be named as additional insureds. All insurance shall be primary and non-contributory. Costs of defense shall be outside the policy limits. The Permittee shall have its current general liability insurance policy on file with the City, including an Additional Insured Endorsement.
16. Permittee shall keep the sidewalks around this improvement safe, clear and unobstructed for pedestrian traffic.
17. If any portion of the improvement is determined to be a pedestrian hazard, public nuisance or a public safety hazard in any way, as determined by the City Engineer in his/her sole discretion, then all or any portion of the improvement shall be removed, at the City's option, by Permittee at the Permittee's sole expense or by the City at the Permittee's expense.
18. Any design changes to the encroachment area require the prior written approval of the City Engineer.
19. Should the Permittee or the Permittee's contractor or agent add improvements to the public right-of-way where there is an existing street tree or a new or replacement tree is planted, approval of the work by the City's Arborist is required. The Permittee and contractor or agent performing the work shall assume any responsibility for repair and/or replacement of those private improvements, should those improvements be damaged by root intrusion, or for any other cause, by a City street tree.
20. The encroachment consisting of artificial turf shall be spaced 24" from the trunks of any City tree and the installation of irrigation bubblers is also required at least 15" from the base of tree within said spacing to provide proper oxygen and moisture for surface roots for the health of the tree. Approval of the work by the City's Arborist is required.
21. Permittee shall comply with all applicable laws related to the construction, maintenance, or removal of the encroachment or any action or omission in connection with any rights or obligations under this permit. If the Benefitted Property or the encroachment has been designated as a historical resource under the City's Historic Resource Code, any construction or removal of the encroachment shall comply with the Secretary of the Interior's Standards for Treatment of Historical Properties and other applicable rules,

regulations, and law, including the Historic Alteration Permit, if any, referenced in Paragraph Three of Attachment A.

DRAFT

APPROVED AS TO FORM AND CONTENT

By: _____

Date: _____

Insert Name
City of Coronado
City Engineer

-NOTARIZATION REQUIRED-

AGREED AND ACCEPTED:

By: _____

Name of Applicant
Owner
Permittee

Date: _____

(Signature) _____
authorized representative

-NOTARIZATION REQUIRED-

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, before me, _____, Notary Public,

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.

Place Notary Seal Above

Signature of Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, before me, _____, Notary Public,

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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.

Place Notary Seal Above

Signature of Notary Public

**ATTACHMENT A TO ENCROACHMENT MAINTENANCE
AND REMOVAL AGREEMENT REGARDING
ENCROACHMENT PERMIT NO. **EXXXX-XXX****

PARAGRAPH ONE:

Permittee

Name
Address
Coronado, CA 92118

PARAGRAPH TWO:

Benefited Property

Address
Coronado, CA. 92118
A.P.N.: XXX-XXX-XX

PARAGRAPH THREE:

This encroachment permit

PARAGRAPH FOUR:

Purpose

The purpose of this permit is to allow the Permittee to construct, at his/her expense, the private improvements as shown in **Exhibit A** of the encroachment permit, within the public right-of-way adjacent to **address**.

PARAGRAPH FIVE:

Pursuant to Coronado Municipal Code Section 52.08.020, on [insert date of Council action] the City Council of the City of Coronado approved the encroachment permit subject to the conditions that Permittee execute an Encroachment Maintenance and Removal Agreement in a form acceptable to the City.

**EXHIBIT A TO COVENANT REGARDING
ENCROACHMENT PERMIT NO. **EXXXX-XXX****

DRAFT