

Recording Requested By:
City of Grover Beach
Public Works Department
No Fee-Gov't. Code Sections
6103 and 27383

When Recorded, Mail To:
City of Grover Beach
154 South 8th Street
Grover Beach, CA. 93433
ATTN: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ENCROACHMENT AND MAINTENANCE COVENANT AND AGREEMENT
(For Encroachment in a Public Right-of-Way)

This Encroachment and Maintenance Covenant and Agreement ("Agreement") is entered into on [REDACTED], 20[REDACTED] (the "Effective Date") by and between the City of Grover Beach, a California municipal corporation ("City"), and the [REDACTED] ("Covenantor"), without regard to number or gender. Whenever in this Agreement the context hereof requires, the neuter shall include the masculine or feminine or both and the singular shall include the plural.

Recitals

WHEREAS, Covenantor is the record owner of the real property situated in the City of Grover Beach, County of San Luis Obispo, State of California, APN [REDACTED], commonly known as [REDACTED], and more fully [REDACTED] in Exhibit "A" attached hereto and incorporated herein, hereinafter called the "Real Property."

WHEREAS, certain property immediately outside and abutting the Real Property is a public right-of-way and/or public street easement, hereinafter referred to as the "Public Right of Way"; and

WHEREAS, pursuant to Article VIII, Chapter 3 of the Grover Beach Municipal Code, Covenantor has requested an Encroachment Permit from the City of Grover Beach ("City") for permission to install [REDACTED], hereinafter referred to as the "Improvements," within a portion of the Public Right of Way as [REDACTED] in Exhibit "B" attached hereto and incorporated herein, hereinafter referred to as the "Encroachment Area"; and

WHEREAS, City is willing to permit the Improvements in the Encroachment Area provided Covenantor maintains the Improvements in accordance with the terms and conditions of this Agreement; and

WHEREAS, the City has reviewed Covenantors' Encroachment Permit Application and finds as follows: (1) that the issuance of the Encroachment Permit will meet a legitimate purpose of Covenantor; (2) that this purpose cannot be feasibly accomplished by other means; and (3) that issuance of the Encroachment Permit for Covenantor's purpose will not be detrimental to the public health, safety, and welfare.

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, the parties agree as follows:

Agreement

1. Use of Encroachment Area. In accordance with this Agreement, and subject to Title 7, Chapter 5, of the Grover Beach Municipal Code, a nonexclusive, revocable Encroachment Permit (“Permit”) to use and occupy the Encroachment Area solely as provided for hereunder shall issue to Covenantor automatically with the recording of this Agreement. The Permit shall operate as a license and continue in effect until revoked by City in any manner provided hereunder. City, its representatives, permittees and franchisees shall have the right to enter upon all or any part of the Encroachment Area at any time for any lawful purpose(s).

Covenantor is neither an employee, partner, nor agent of the City, and Covenantor may use the Encroachment Area solely for purposes of installing, operating, maintaining and repairing the Improvements at its sole cost, expense and liability. If Covenantor fails to reasonably repair any damage to the Encroachment Area caused by Covenantor or the Improvements, City may terminate this Agreement and the Permit, or may perform the necessary repairs at the sole cost and expense of Covenantor as provided in Section 7 below.

2. Maintenance of Improvements and Encroachment Area. Covenantor shall maintain the Improvements and Encroachment Area free of any nuisance in fact or in law. Covenantor shall at all times conduct Covenantor’s activities, or cause Covenantor’s activities to be conducted, in full compliance with all applicable federal, state, and local laws, including without limitation the Americans With Disabilities Act. Covenantor shall be solely responsible for operation, maintenance and repair of the Improvements, including without limitation all costs associated therewith. Covenantor shall at all times operate, maintain and repair the Improvements, including the obligation for graffiti removal, so that there is no unreasonable interference with vehicular or pedestrian traffic. In addition to its governmental, legislative, administrative and regulatory activities, City retains the right to verify that Covenantor is performing its respective obligations in accordance with applicable law and the terms and conditions of this Agreement.

3. Approval of Improvements. The Permit does not and shall not relieve Covenantor from the obligation to meet the applicable requirements of the Public Works Director (“Director”) for any work to be done in the Public Right of Way contiguous to, or within, the Encroachment Area. Before beginning to install the Improvements, Covenantor shall obtain written approval of all plans, drawings, and specifications for such installation from the City’s Director. Upon such approval, Covenantor shall install the Improvements as promptly as practicable in strict accordance with the City approved plans, drawings, and specifications. No change shall be made in the approved plans, drawings, or specifications without the prior written approval of the Director.

4. Non-relinquishment of City Interest. Covenantor and the City agree that the encroachment permitted pursuant to this Agreement shall not in any way waive, relinquish, or diminish the City’s rights in and to the Encroachment Area or any City property encroached upon. City makes no representation or warranty as to the nature or extent of City’s interest in, or the condition or suitability of, the Encroachment Area. Covenantor shall inform and satisfy itself in such regards. Covenantor shall obtain any and all title reports, permits, authorizations, consents and approvals necessary to lawfully enter upon the Encroachment Area and install the Improvements. The Permit

is not permission to trespass on any property, publicly or privately owned by anyone other than the City.

5. Insurance. At all times hereunder, Covenantor shall pay for and maintain in full force and effect a policy of COMMERCIAL GENERAL LIABILITY insurance which shall include contractual, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence. Said policy shall be with an insurance company either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by the City's Risk Manager.

The above-described policy of insurance shall be endorsed to provide an unrestricted thirty (30) day written notice in favor of City, of policy cancellation, change or reduction of coverage. If any policy is due to expire during the life of the Permit or this Agreement, Covenantor shall provide a new certificate evidencing renewal of such policy not less than fifteen (15) days prior to the expiration date of the expiring policy. Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, Covenantor shall file with City a certified copy of the new or renewal policy and certificate for such policy. The General Liability insurance policy shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy of insurance shall be endorsed so Covenantor's insurance shall be primary and no contribution shall be required of City. Covenantor shall furnish City with the certificate(s) and applicable endorsements for the required insurance prior to any occupancy or use of the Encroachment Area. Covenantor shall furnish City with a copy of the actual policy upon the request of the City's Risk Manager at any time during the life of the Permit or this Agreement. If at any time during the life of the Permit, Covenantor fails to maintain the required insurance in full force and effect, any work being performed related to and/or the use of the Encroachment Area shall be immediately discontinued until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City.

6. Indemnification. Covenantor shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether imposed under authority of statute or common law, in contract, tort, or strict liability, including but not limited to personal injury, death at any time, and property damage) incurred by City, Covenantor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses) arising or alleged to have arisen directly or indirectly out of or in any way connected with (a) the issuance and pursuit of the Permit or this Agreement, (b) use of the Encroachment Area by Covenantor, its employees, officers, agents, contractors or subcontractors, and/or (c) design, installation, operation, maintenance, repair and/or removal of the Improvements. Covenantor's obligations under this section shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of City or any of its officers, officials, employees, agents or volunteers. This section shall survive revocation or termination of the Permit and this Agreement.

7. Default. There shall be a default under this Agreement if, without excuse, Covenantor fails to reasonably maintain and/or repair the Improvements, or repair any damage to the Encroachment Area caused by Covenantor or as a result of the Improvements, pursuant to the terms of this

Agreement and such failure is not cured within five (5) days after written notice thereof from the City, provided that if the matter to be cured cannot reasonably be cured within five (5) days, Covenantor shall not be in default if it commences to cure the matter within thirty (30) days and diligently and in good faith continues to cure the matter. If Covenantor fails to cure, the City may terminate this Agreement and the Permit, or may cure the default if it elects to do so, and Covenantor shall reimburse City for the costs incurred in curing the default. If the City cures, and Covenantor fails to pay City for the costs incurred in curing the default within thirty (30) days after City's written demand for payment, the amount of the unpaid costs, plus any administrative costs and reasonable attorney's fees incurred by the City in collecting said unpaid costs, plus reasonable interest as permitted by law, shall be considered a debt owed by Covenantor to City and collectable in any lawful manner.

8. Revocation of Permit. City, in its sole discretion, may revoke the Permit (i) upon Director's determination that Covenantor has failed to comply with one or more of the terms, conditions, or restrictions hereunder, and/or (ii) upon Director's determination that the use of the Encroachment Area, or any portion thereof, is required for any municipal or public utility purpose, or Covenantor's use is detrimental to or not in furtherance of the public health, safety, welfare and interest. City shall endeavor to give at least sixty (60) days written notice of such requirement and/or finding either by mailing such notice through the United States mail, or by personal delivery, to Covenantor at its address of record or at such other address as is provided to City in writing by Covenantor. Upon revocation of the Permit, Covenantor shall, at its sole cost, expense and liability remove the Improvements and any and all appurtenant structures and equipment located in the Encroachment Area, restore the Encroachment Area to substantially the same condition it was in prior to installation of the Improvements, and surrender to the City all possession, use and occupation of the Encroachment Area. Further, Covenantor shall defend, indemnify, and hold harmless the City and each of its officers, officials, employees, agents and volunteers from and against any and all liabilities, demands, claims, damages, losses, costs, and expenses of whatsoever kind or nature, including, but not limited to, any and all direct and indirect costs of defense, made against, or incurred or suffered by, any such indemnitee resulting directly or indirectly from the requirements of this section, or otherwise in connection with the reoccupation and repossession of the Encroachment Area by the City.

9. Agreement Runs With The Land. This Agreement and the obligations herein shall constitute covenants that run with the land pursuant to California Civil Code Section 1468 and shall be binding on Covenantor and each of its grantees, heirs, successors, and assigns, and all parties having or acquiring any right, title or interest in the real property described in Exhibit "A" attached hereto.

10. Additional Approvals Not Included in This Agreement. Covenantor represents and warrants that Covenantor has consulted with the City of Grover Beach to confirm whether any additional permit(s) or approval(s) are required for the encroachment and Improvements, and Covenantor agrees to apply for and acquire any such additional permit(s) and approval(s). City may revoke the Permit in the manners provided within Sections 7 and 8 above should Covenantor fail to obtain any such applicable additional permit(s) or approval(s). Covenantor acknowledges and understands that neither this Agreement nor the Permit constitutes, in any way whatsoever, any agreement or commitment by or on behalf of City to enter into any further/other agreement, permit, approval, or other arrangement of any type whatsoever, beyond the terms of this Agreement.

11. Taxes. Although this Agreement creates no interest in the Encroachment Area, Covenantor acknowledges that, pursuant to applicable provisions of the California Revenue and Taxation Code, under some circumstances, Covenantor's use of the Encroachment Area may be subject to property taxation and/or assessments. City makes no representation as to whether or not taxes or assessments are or will be due. Covenantor shall be solely responsible for any property taxes and assessments arising out of Covenantor's use of the Encroachment Area, and Covenantor shall protect and hold the City harmless from any taxes and assessments, including any and all interest, penalties and other expenses which may be imposed, which may arise as a result of the Improvements or Covenantor's use of the Encroachment Area, and from any lien therefor or sale or other proceedings to enforce payment thereof. Nothing herein shall be deemed to limit any of Covenantor's rights to appeal any such levies and/or assessments in accordance with the rules, regulations, laws, statutes, or ordinances governing the appeal process of the taxing authority(ies) making such levies and/or assessments.

12. Liens and Claims. Covenantor shall promptly pay in full for all materials for the Improvements and shall promptly pay in full all persons who perform labor on the Improvements. If any mechanics' or materialmen's liens or any other liens or claims for any work done or materials furnished at Covenantor's request are filed against the Encroachment Area, Covenantor shall remove the liens and claims at Covenantor's own expense. If Covenantor fails to remove the liens or claims and any judgment is entered thereon or thereunder, Covenantor shall pay that judgment. Should Covenantor fail, neglect, or refuse to remove any lien or claim or to pay any judgment in a timely manner, and in no event later than the date this Agreement terminates, Covenantor shall have the right to pay any amount required to release any such liens or claims, or to defend any action brought on the liens or claims and to pay any judgment entered on the liens or claims. Under those circumstances, Covenantor shall be liable to City for all costs, damages, reasonable attorneys' fees, and any amounts expended in defending any proceedings or in the payment of any of said liens or claims or any judgment obtained therefore. City may post and maintain upon the Encroachment Area a notice of nonresponsibility.

13. Severability. In the event any clause, sentence, term or provision of this Agreement shall be held by any court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, the remaining portions of this Agreement shall nonetheless remain in full force and effect, except that the City may revoke the Permit in the manner provided in Section 10 above if such invalidity or unenforceability shall cause this Agreement and the Permit to fail of its essential purposes.

14. Interpretation. This Agreement is the result of the combined efforts of the parties hereto. If any provision of this Agreement is found to be ambiguous in any way, such ambiguity shall not be resolved by construing the provision or this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning. If there is any conflict between the terms of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of this Agreement shall control and take precedence over any conflicting terms or conditions expressed in the Exhibit or Attachment. Furthermore, any terms or conditions contained in any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties provided for in this Agreement shall be null and void.

15. Governing Law and Venue. This Agreement shall be governed by and construed in

accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of San Luis Obispo subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the City.

16. Attorney's Fees. The prevailing party in any action to enforce or interpret any term, covenant or condition of this Agreement shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

17. Miscellaneous. This Agreement shall benefit and bind the City and Covenantor and their respective successors and assigns. This Agreement may not be amended or modified except by a written agreement signed by both the City and Covenantor. This Agreement constitutes the entire and integrated agreement between the City and Covenantor relating to the subject matter of this Agreement and supersedes all prior agreements and understandings between the parties.

18. Notices. All notices and other communications under this Agreement shall be deemed properly given when personally delivered or mailed by regular mail, postage prepaid, to the party at the address set forth below or such other address as such party may designate by notice to the other party. Any notice or other communication under this Agreement may be given on behalf of a party by the attorney for such party. Notice shall be given to the parties as follows:

City:

City of Grover Beach
154 South 8th Street
Grover Beach, CA 93433
Attention: City Manager

Covenantor:

[NAME]
[ADDRESS]
[CITY, STATE, ZIP]
Attn: [NAME]

19. Authority to Execute. The signatories to this Agreement represent that they have received proper authority to execute this Agreement on behalf of the respective party.

IN WITNESS WHEREOF, the parties have executed this agreement as of the Effective Date.

CITY OF GROVER BEACH, a California
Municipal Corporation

[NAME - COVENANTOR],
[TITLE]

By: _____
[NAME], City Manager

By: _____
Name: _____
Title: _____

ATTACH NOTARY ACKNOWLEDGEMENT

TEMPLATE

EXHIBIT A

[PROVIDE LEGAL DESCRIPTION OF PROPERTY]

EXHIBIT B

[REPLACE THIS PAGE WITH AN EXHIBIT OF THE PROPERTY AND THE SUBJECT ENCROACHMENT COVERED UNDER THIS AGREEMENT – MAKE SURE THAT THE PAGE LISTS “EXHIBIT B” ON IT FOR RECORDING PURPOSES]