



City of Larkspur

400 Magnolia Avenue, Larkspur, California 94939

Telephone: (415) 927-5110 Fax: (415) 927-5022

Website: www.cityoflarkspur.org

INSTRUCTION TO APPLICANT/PROPERTY OWNER

RE: LICENSE AGREEMENT TO PERMIT ENCROACHMENT ON CITY PROPERTY

Purpose of License Agreement

You have made a request to the City of Larkspur to encroach in the public right-of-way with new and/or existing private improvements. These improvements benefit you as property owner while exposing the City to liability against possible claims made by a 3rd party for injuries and damages as a result of your private improvements. The license agreement, among other things, serves to identify these improvements and indemnifies the City by requiring the property owner to carry sufficient liability and property damage insurance.

Requirements and Conditions

The City will agree to your private improvements in the public right-of-way provided you successfully execute an Encroachment License Agreement with the City. Since the successful execution of this agreement is a condition of various encroachment and building permits associated with your project, permits cannot be closed nor certificates of occupancy issued until the process is complete.

Fees

The applicable fee is \$250 which must be paid at the same time as other associated permit fees. The fee includes the County recording fees.

Directions

Attached is a sample of the agreement that you will be signing. The following documents and information is needed to prepare the agreement

- 1) Email the Public Works staff member listed below to acknowledge your receipt of this packet and that you are initiating the license agreement process. A confirmation email will be sent to you;
- 2) Provide a copy of a Title Report or Grant Deed, which shows a legal description of the property and legal title in which the property is held (needed for Exhibit A);
- 3) Provide a written description and drawing of proposed work (needed for Exhibit B.)
 - o Use numbered or lettered bullets for a written description of the Proposed Work. This description can be on the drawing or on a separate sheet of paper.
 - o Provide an 8½" x 11" drawing showing the encroachments (the private improvements) with respect to the public right-of-way.
 - o Note: any text in the drawing must be completely legible otherwise the County Recorder may refuse to record the document. Please see the attached "Sample Drawing" for examples of drawings that have been accepted by the County Recorder. Hand-drawn drawings are acceptable.
- 4) Provide a Certificate of Insurance with an Endorsement Page naming the City of Larkspur as an Additional Insured. A Declaration or Evidence of Coverage is not sufficient. It is suggested that you forward the Sample License Agreement and "Instruction for your Insurance Broker" documents to your insurance agent to facilitate this process (needed for Exhibit C).
- 5) After you submit all the documents needed for Exhibits A to C, the City will prepare an executable agreement, which you will then sign in front of a notary public. The agreement will then be sent to the County Recorder's Office for recordation. A copy of the recorded agreement will be sent to you afterwards.

Timing

For most property owners, completing the steps listed above takes approximately 4-5 weeks. You are encouraged to get started early the process to avoid any delays in closing out your project.

If there are questions or you need further information, please call or email:

Rita Schoch, Public Works Analyst

Email: rschoch@cityoflarkspur.org

Phone: 415-927-5784

RECORDING REQUESTED BY AND
AFTER RECORDING RETURN TO:

City of Larkspur
400 Magnolia Avenue
Larkspur, CA 94939
Attn: Public Works Department

_____/

**LICENSE AGREEMENT TO PERMIT
ENCROACHMENT ON CITY PROPERTY AND DECLARATION
OF RESTRICTIVE COVENANTS**

This License Agreement and Declaration of Restrictive Covenants ("Agreement") is entered into on **Date** between the City of Larkspur, a municipal corporation, ("Licensor"); and **Legal Name of Property Owner** ("Licensee"). This Agreement is made with reference to the following facts:

RECITALS

- A. **Legal Name of Property Owner** are the owners of real property at **Street Address**, City of Larkspur, CA, commonly known as APN # **XXX-XX-XX** and further described in Exhibit "A".
- B. Adjacent to the property line of said real property, there exists a right-of-way owned by Licensor.
- C. Licensee desires to construct certain improvements which will encroach upon and be located in the above-referenced right-of-way owned by Licensor.
- D. Licensor is agreeable to permitting said encroachment upon the terms and conditions expressed herein.

AGREEMENT

In consideration of the foregoing, and subject to the terms and conditions set forth herein below, the parties agree as follows:

1. **Grant.** Licensor hereby grants to Licensee, subject to the terms and conditions contained herein, the right to construct, maintain and install the following described improvements on the following described public right-of-way owned by Licensor, all as shown on Exhibit "B" attached hereto and/or on file with the City of Larkspur Department of Public Works.

- a. The improvements permitted to be constructed, maintained and installed by this Agreement are described as follows:

Description of improvement in the public right-of-way.

b. The public right-of-way and/or property which will be burdened by said improvements is described as follows:

Name of street(s) that is affected by improvement.

2. **License Fee.** In consideration for the license herein granted, Licensee agrees to pay to Licensors the City of Larkspur's applicable encroachment permit fee, payable upon execution of this Agreement, and to pay all costs and fees, including staff time and/or City Attorney fees, if any, incurred by the Licensors for the negotiation and preparation of this Agreement. Licensors may require a monetary deposit to be made by Licensee upon application for this License, in an amount set by City Council resolution, and against which deposit City's administrative processing costs and fees shall be charged.

3. **Construction and Maintenance Expenses.** Licensee shall bear the cost and expense of constructing, reconstructing and maintaining the improvements described above. Licensee further agrees that all work upon or in connection with said improvements shall be done at such times and in such manner as is approved by Licensors and shall be done in accordance with plans and specifications approved by Licensors and subject to all permits required by Licensors pursuant to state or local law or regulation.

a. Licensee shall not modify or in any fashion change the improvements, once constructed, without the written permission of Licensors.

b. Licensee agrees to construct said improvements in a workmanlike fashion and to at all times maintain said improvements and the portions of Licensors' right of way on which the improvements are constructed in a good and sound condition and in a condition that remains aesthetically and visually pleasing and acceptable to the Licensors. If Licensee fails to maintain said improvements in good and sound condition, in the sole determination of Licensors, Licensee hereby grants to Licensors the right to either remove said improvements or to maintain them, at Licensors' option. If Licensors is required to remove and/or maintain said improvements, Licensee agrees to reimburse Licensors for the cost thereof and for any costs necessary to return said right of way of Licensors to the condition existing before the execution of this Agreement within 30 days after the mailing to Licensee of an invoice for said costs by Licensors. If such invoice is not so paid, the remaining balance shall accrue interest at the rate of 10% per year until paid. Furthermore, if said invoice is not so paid, Licensee agrees to permit Licensors to impose a lien upon the real property described in Exhibit "A" without notice to Licensee.

4. **Removal of Improvements.** Licensee expressly acknowledges that the improvements covered by this agreement are being allowed to be constructed in a public right-of-way and that, from time to time, said right-of-way will require improvement, relocation, destruction and/or removal. In the event of said events occurring, Licensee expressly consents to the Licensors removing and/or replacing said improvements, at the unfettered and complete discretion of Licensors, and Licensee further agrees to effect the removal and replacements at its

cost within sixty (60) days of receipt of written notice to do so from Licensor. In the event that Licensee declines to effect said removal and/or replacement, Licensee grants to Licensor the right to remove and/or replace said improvements and the cost thereof shall be paid in accordance with the paragraph 3 above.

a. Licensee hereby waives any/or all claims against Licensor for any and all damage or injury done to the real property described in Exhibit "B" and/or the structures and/or any personal property located thereon caused as a result of the removal and/or replacement described in the immediately preceding paragraph and Licensee indemnifies and holds Licensor harmless for any and all such damages or injuries, irrespective of the passive or active negligence of Licensor.

b. Upon removal of said improvements and any repair or restoration of Licensor's property required by this Agreement and/or payment of costs of said repair, restoration and/or removal, all as provided for under this Agreement, and to the satisfaction of Licensor, Licensor shall provide Licensee with a recordable Certificate of Release and Satisfaction of Covenants demonstrating satisfaction of the restrictive covenants set forth in this Agreement.

5. Indemnification and Hold Harmless.

a. Licensee shall assume all risks of damage to the improvements and any appurtenances thereto and to any other property of Licensee or any property under the control of Licensee while upon or near Licensor's right-of-way described at paragraph 1(b).

b. Licensee further agrees to indemnify and hold harmless Licensor, its officers, employees, agents, successors, and assigns, from any and all claims, liabilities, damages, failure to comply with any current or prospective laws, attorney's fees, loss or damage to property whether owned by Licensor, Licensee and/or third parties to this Agreement, and/or injury to or death of any person arising out of the construction, maintenance, removal, replacement, rehabilitation, repair, or the location of the improvements or out of Licensee's activities on Licensor's right- of-way described hereinabove.

6. Insurance. Licensee, at its sole cost, shall maintain general liability and property damage insurance in the amount of **\$1 million** combined single limit for bodily injury and property damage, or such other amount as is determined sufficient by the City Manager and Director of Public Works, with insurers which are acceptable to Licensor, insuring against all liability of Licensee and its authorized representatives arising out of and in connection with Licensee's use or occupancy of Licensor's property pursuant to this Agreement.

All general liability insurance and property damage insurance shall insure performance by Licensee of the indemnity provisions of this Agreement. Licensor shall be named as an Additional Insured, and the policy shall contain cross-liability and primary insurance endorsements.

Each policy, or a certificate of the policy, shall be deposited with Licensor at the commencement of the term of this Agreement, and on renewal of the policy not less than twenty

(20) days before expiration of the term of the policy. Licensee shall provide evidence of said insurance, the certificate and endorsements in the forms attached hereto as **Exhibit "C"**.

Licensee shall make arrangements with the insurers that the insurers shall provide Licensor with notice of cancellation or termination of the insurance at least thirty (30) days in advance of cancellation or termination. Licensee shall continuously maintain the insurance required by this Agreement until Licensor issues its Certificate of Release and Satisfaction of Covenants pursuant to Paragraph 4 hereof.

7. Term. This agreement and the rights granted hereunder may be terminated by Licensor upon giving written notice to Licensee at least ninety (90) days prior to the termination.

a. Should Licensee, its successors and assigns, at any time abandon the use of the property described in **Exhibit "B"** or any part thereof, or fail at any time to use the same for the purpose for which development of said property was approved for a continuous period of ninety (90) days, the rights and obligations hereby created shall cease to the extent of the use so abandoned and/or discontinued, and Licensor shall have the right to declare this Agreement terminated to the extent of the use so abandoned or discontinued.

b. Upon termination of the rights and privileges hereby granted, Licensee, at its own cost and expense, agrees to remove said improvements for which this license is granted and to return the right-of-way to the condition it was in prior to the execution of this License. Should Licensee in such event fail, neglect, or refuse to remove said improvement or return the right-of-way to such condition, such removal and restoration may be performed by Licensor at the expense of Licensee, which expense, including any attorney's fees, Licensee agrees to pay upon demand and, if not so paid, said expenses shall be paid in accordance with paragraph 3(b), above.

8. Notices. Any and all notices and demands required or permitted to be given hereunder, shall be in writing and shall be served either personally or by certified mail, return receipt requested, to the following addresses:

TO: City of Larkspur
400 Magnolia Avenue
Larkspur, CA 94939
Attention: Director of Public Works

AND

TO: Name of Property Owner(s)
Address
Larkspur, CA 94939

9. Waiver. The waiver by Licensor of any breach or any term, covenant, or condition herein shall not be deemed to be a waiver of such term, covenant, condition or any subsequent breach of the same, or any other term, covenant or condition herein contained.

10. **Authority of Parties.** Each individual executing this agreement in behalf of a corporation or other private entity shall represent and warrant that he/she is duly authorized to execute this agreement on behalf of the corporation and/or entity, in accordance with the duly adopted resolution of the Board of Directors of such corporation, and/or entity, a copy of said resolution shall be provided to Licensor, along with the executed original of this agreement.

11. **Attorney's Fees.** In the event that either party is required to bring an action to enforce or interpret terms and conditions of this agreement, the prevailing party shall be entitled to payment of its attorney's fees, as well as expert witness fees.

12. **Assigns and Successors.** This agreement shall inure to the benefit and be binding upon each party's assigns and successors, and it is the intent of the parties that this license and its terms and conditions shall run with the land and be binding upon all successors in interest to the real property described in **Exhibit "A"** attached hereto.

IN WITNESS WHEREOF, the undersigned have executed this agreement as of the day and year first written above.

[NOTARIZED SIGNATURES BELOW]

CITY OF LARKSPUR

PROPERTY OWNER(S)

Director of Public Works

Name of Owner

Name of Owner

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

NOTE TO APPLICANT:

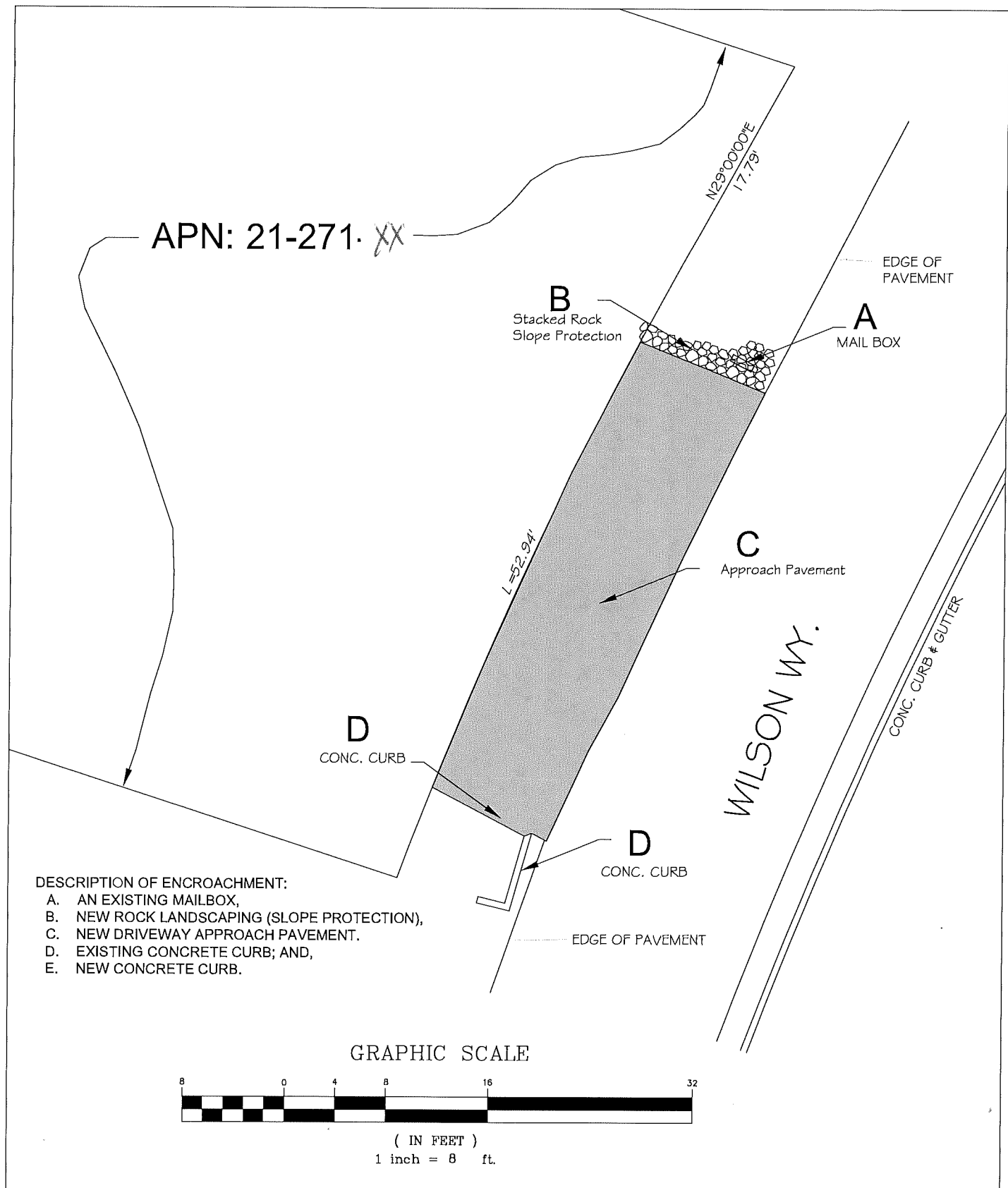
Provide a copy of a Title Report or Grant Deed which shows the legal description of the property and legal title in which the property is held.

EXHIBIT B

**DRAWING SHOWING ENCROACHMENT
WITH RESPECT TO PUBLIC RIGHT-OF-WAY**

NOTE TO APPLICANT:

- Provide a written description of the Proposed Work, using numbered or lettered bullets. This can be on the drawing or on a separate sheet of paper.
- Provide a drawing showing the encroachment (Proposed Work described above) with respect to the public right-of-way. The drawing must be cross-referenced with numbered or lettered Proposed Work listed above
- NOTE: any text in the drawing must be completely legible otherwise the County Recorder may refuse to record the document.



Property Address & AP#

ENCROACHMENT LICENSE

Example of drawing accepted by County Recorder

LOMA VISTA AVE

← PUBLIC RIGHT OF WAY
✓

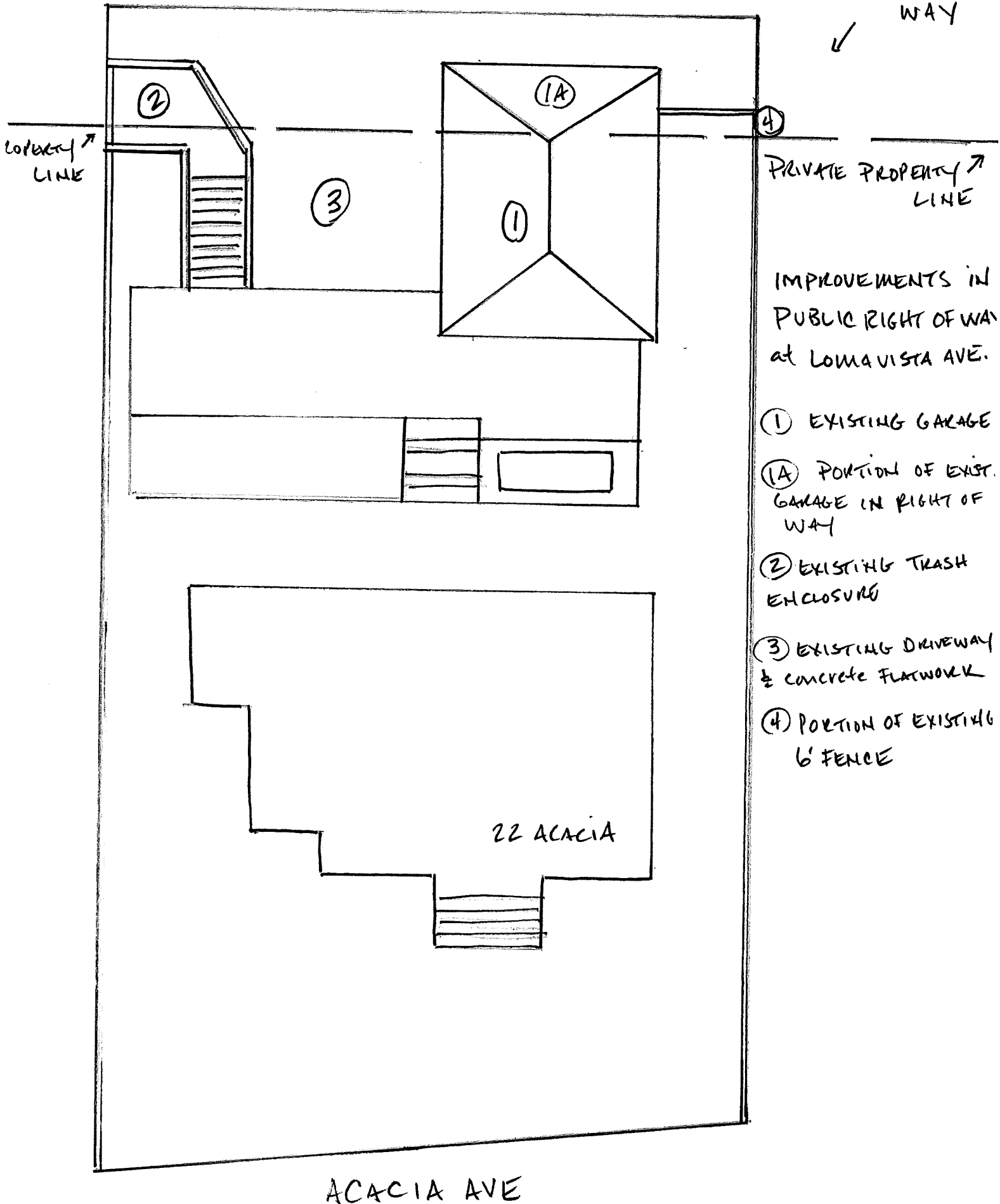


EXHIBIT C

**CERTIFICATE OF INSURANCE
AND
ENDORSEMENT LISTING THE CITY OF LARKSPUR AS ADDITIONAL INSURED**

NOTE TO APPLICANT:

FORWARD the attached document called “For your Insurance Agent” to your insurance company.
It contains the information needed to facilitate this process.

ATTACHMENT B

Licensee shall make arrangements with the insurers that the insurers shall provide Licensor with notice of cancellation or termination of the insurance at least thirty (30) days in advance of cancellation or termination. Licensee shall continuously maintain the insurance required by this Agreement until Licensor issues its Certificate of Release and Satisfaction of Covenants pursuant to Paragraph 4 hereof.

7. **Term.** This agreement and the rights granted hereunder may be terminated by Licensor upon giving written notice to Licensee at least ninety (90) days prior to the termination.

a. Should Licensee, its successors and assigns, at any time abandon the use of the property described in **Exhibit "B"** or any part thereof, or fail at any time to use the same for the purpose for which development of said property was approved for a continuous period of ninety (90) days, the rights and obligations hereby created shall cease to the extent of the use so abandoned and/or discontinued, and Licensor shall have the right to declare this Agreement terminated to the extent of the use so abandoned or discontinued.

b. Upon termination of the rights and privileges hereby granted, Licensee, at its own cost and expense, agrees to remove said improvements for which this license is granted and to return the right-of-way to the condition it was in prior to the execution of this License. Should Licensee in such event fail, neglect, or refuse to remove said improvement or return the right-of-way to such condition, such removal and restoration may be performed by Licensor at the expense of Licensee, which expense, including any attorney's fees, Licensee agrees to pay upon demand and, if not so paid, said expenses shall be paid in accordance with paragraph 3(b), above.

8. **Notices.** Any and all notices and demands required or permitted to be given hereunder, shall be in writing and shall be served either personally or by certified mail, return receipt requested, to the following addresses:

TO: City of Larkspur
400 Magnolia Avenue
Larkspur, CA 94939
Attention: Director of Public Works

AND

TO: Name of Property Owner(s)
Address
Larkspur, CA 94939

9. **Waiver.** The waiver by Licensor of any breach or any term, covenant, or condition herein shall not be deemed to be a waiver of such term, covenant, condition or any subsequent breach of the same, or any other term, covenant or condition herein contained.

10. **Authority of Parties.** Each individual executing this agreement in behalf of a corporation or other private entity shall represent and warrant that he/she is duly authorized

ATTACHMENT B

to execute this agreement on behalf of the corporation and/or entity, in accordance with the duly adopted resolution of the Board of Directors of such corporation, and/or entity, a copy of said resolution shall be provided to Licensor, along with the executed original of this agreement.

11. **Attorney's Fees.** In the event that either party is required to bring an action to enforce or interpret terms and conditions of this agreement, the prevailing party shall be entitled to payment of its attorney's fees, as well as expert witness fees.

12. **Assigns and Successors.** This agreement shall inure to the benefit and be binding upon each party's assigns and successors, and it is the intent of the parties that this license and its terms and conditions shall run with the land and be binding upon all successors in interest to the real property described in **Exhibit "A"** attached hereto.

IN WITNESS WHEREOF, the undersigned have executed this agreement as of the day and year first written above.

[NOTARIZED SIGNATURES BELOW]

CITY OF LARKSPUR

PROPERTY OWNER(S)

Director of Public Works

Name of Owner



City of Larkspur

400 Magnolia Avenue, Larkspur, California 94939
Telephone: (415) 927-5110 Fax: (415) 927-5022
Website: www.cityoflarkspur.org

FOR YOUR INSURANCE AGENT

Instructions to Licensee – please forward this document to your insurance broker. This will help facilitate getting the proper insurance documentation needed for successful execution of the License Agreement.

TO WHOM IT MAY CONCERN:

Your Insured is entering into an agreement with the City of Larkspur, called a “*License Agreement to Permit Encroachment on City Property and Declaration of Restrict Covenants.*”

The purpose of the agreement is to allow the Licensee (your Insured) to build their permanent private improvements in the public right-of-way. This is a courtesy being extended to the Licensee by the City (Licensor). To protect and indemnify the City against 3rd party claims resulting from these private improvements, the City must be named as an Additional Insured on your Insured’s property, homeowner, or umbrella policy for general liability.

Please note that the required insurance has nothing to do with any on-going or previous construction your Insured may have with a general contractor. The contractor’s insurance policy protects your Insured from claims made against the contractor and is completely separate from the insurance needed for this license agreement.

To meet the City’s requirements for the agreement, please provide the following.

- Certificate of Insurance, naming the City of Larkspur as a Certificate Holder and as an Additional Insured;
- a separate Endorsement page, showing the City on the face of the document, as well as the policy number that the Endorsement page is changing.
- A sample certificate and endorsement is provided as Attachment A.

A copy of the sample Agreement is provided as Attachment B. The insurance requirements are stated in Section 6 (on page 3). You may need to check with your commercial division or your regional office to provide your Insured with the required commercial liability coverage.

For questions, please contact:

Rita Schoch, 415-927-5784

rschoch@cityoflarkspur.org



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
INSURED	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
INSURER E:		
INSURER F:		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY						EACH OCCURRENCE \$ 1,000,000
	☒ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	☐ CLAIMS-MADE ☒ OCCUR						MED EXP (Any one person) \$ 1,000,000
		Y		Policy #123456789	MM/DD/YYY	MM/DD/YYY	PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	☐ POLICY ☐ PROJECT ☒ LOC						PRODUCTS - COMP/OP AGG \$ 2,000,000
							\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	☐ ANY AUTO						BODILY INJURY (Per person) \$
	☐ ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	☐ HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
	☐ SCHEDULED AUTOS						\$
	☐ NON-OWNED AUTOS						
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	☐ OCCUR						\$
	☐ CLAIMS-MADE						
	DED RETENTION \$						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

City of Larkspur is included as an Additional Insured under the General Liability per attached endorsement CG 20 12 re: private improvements caused by the ___ Name of insured ___ in the public right-of-way at ___ address of insured property ___, Larkspur, CA.

Primary wording applies under General Liability per attached Endorsement referenced above, as respect to Encroachment License Agreement.

CERTIFICATE HOLDER

CANCELLATION

City of Larkspur Attn: Public Works Director 400 Magnolia Avenue Larkspur, CA 94939	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

ATTACHMENT A

POLICY NUMBER: #123 456 789

COMMERCIAL GENERAL LIABILITY
CG 20 12 05 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – STATE OR GOVERNMENTAL
AGENCY OR SUBDIVISION OR POLITICAL
SUBDIVISION – PERMITS OR AUTHORIZATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

State Or Governmental Agency Or Subdivision Or Political Subdivision:

CITY OF LARKSPUR
Department of Public Works
400 Magnolia Avenue
Larkspur, CA 94939

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II – Who Is An Insured is amended to include as an insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.
2. This insurance does not apply to:
 - a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
 - b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

RECORDING REQUESTED BY AND
AFTER RECORDING RETURN TO:

City of Larkspur
400 Magnolia Avenue
Larkspur, CA 94939
Attn: Public Works Department

_____ /

**LICENSE AGREEMENT TO PERMIT
ENCROACHMENT ON CITY PROPERTY AND DECLARATION
OF RESTRICTIVE COVENANTS**

This License Agreement and Declaration of Restrictive Covenants ("Agreement") is entered into on Date between the City of Larkspur, a municipal corporation, ("Licensor"); and Legal Name of Property Owner ("Licensee"). This Agreement is made with reference to the following facts:

RECITALS

- A. Legal Name of Property Owner are the owners of real property at Street Address, City of Larkspur, CA, commonly known as APN # XXX-XX-XX and further described in Exhibit "A".
- B. Adjacent to the property line of said real property, there exists a right-of-way owned by Licensor.
- C. Licensee desires to construct certain improvements which will encroach upon and be located in the above-referenced right-of-way owned by Licensor.
- D. Licensor is agreeable to permitting said encroachment upon the terms and conditions expressed herein.

AGREEMENT

In consideration of the foregoing, and subject to the terms and conditions set forth herein below, the parties agree as follows:

1. **Grant.** Licensor hereby grants to Licensee, subject to the terms and conditions contained herein, the right to construct, maintain and install the following described improvements on the following described public right-of-way owned by Licensor, all as shown on Exhibit "B" attached hereto and/or on file with the City of Larkspur Department of Public Works.

- a. The improvements permitted to be constructed, maintained and installed by this Agreement are described as follows:

Description of improvement in the public right-of-way.

b. The public right-of-way and/or property which will be burdened by said improvements is described as follows:

Name of street(s) that is affected by improvement.

2. **License Fee.** In consideration for the license herein granted, Licensee agrees to pay to Licensors the City of Larkspur's applicable encroachment permit fee, payable upon execution of this Agreement, and to pay all costs and fees, including staff time and/or City Attorney fees, if any, incurred by the Licensors for the negotiation and preparation of this Agreement. Licensors may require a monetary deposit to be made by Licensee upon application for this License, in an amount set by City Council resolution, and against which deposit City's administrative processing costs and fees shall be charged.

3. **Construction and Maintenance Expenses.** Licensee shall bear the cost and expense of constructing, reconstructing and maintaining the improvements described above. Licensee further agrees that all work upon or in connection with said improvements shall be done at such times and in such manner as is approved by Licensors and shall be done in accordance with plans and specifications approved by Licensors and subject to all permits required by Licensors pursuant to state or local law or regulation.

a. Licensee shall not modify or in any fashion change the improvements, once constructed, without the written permission of Licensors.

b. Licensee agrees to construct said improvements in a workmanlike fashion and to at all times maintain said improvements and the portions of Licensors' right of way on which the improvements are constructed in a good and sound condition and in a condition that remains aesthetically and visually pleasing and acceptable to the Licensors. If Licensee fails to maintain said improvements in good and sound condition, in the sole determination of Licensors, Licensee hereby grants to Licensors the right to either remove said improvements or to maintain them, at Licensors' option. If Licensors is required to remove and/or maintain said improvements, Licensee agrees to reimburse Licensors for the cost thereof and for any costs necessary to return said right of way of Licensors to the condition existing before the execution of this Agreement within 30 days after the mailing to Licensee of an invoice for said costs by Licensors. If such invoice is not so paid, the remaining balance shall accrue interest at the rate of 10% per year until paid. Furthermore, if said invoice is not so paid, Licensee agrees to permit Licensors to impose a lien upon the real property described in Exhibit "A" without notice to Licensee.

4. **Removal of Improvements.** Licensee expressly acknowledges that the improvements covered by this agreement are being allowed to be constructed in a public right-of-way and that, from time to time, said right-of-way will require improvement, relocation, destruction and/or removal. In the event of said events occurring, Licensee expressly consents to the Licensors removing and/or replacing said improvements, at the unfettered and complete discretion of Licensors, and Licensee further agrees to effect the removal and replacements at its cost within sixty (60) days of receipt of written notice to do so from Licensors. In the event that Licensee declines to effect said removal and/or replacement, Licensee grants to Licensors the right

to remove and/or replace said improvements and the cost thereof shall be paid in accordance with the paragraph 3 above.

a. Licensee hereby waives any/or all claims against Licensor for any and all damage or injury done to the real property described in Exhibit "B" and/or the structures and/or any personal property located thereon caused as a result of the removal and/or replacement described in the immediately preceding paragraph and Licensee indemnifies and holds Licensor harmless for any and all such damages or injuries, irrespective of the passive or active negligence of Licensor.

b. Upon removal of said improvements and any repair or restoration of Licensor's property required by this Agreement and/or payment of costs of said repair, restoration and/or removal, all as provided for under this Agreement, and to the satisfaction of Licensor, Licensor shall provide Licensee with a recordable Certificate of Release and Satisfaction of Covenants demonstrating satisfaction of the restrictive covenants set forth in this Agreement.

5. Indemnification and Hold Harmless.

a. Licensee shall assume all risks of damage to the improvements and any appurtenances thereto and to any other property of Licensee or any property under the control of Licensee while upon or near Licensor's right-of-way described at paragraph 1(b).

b. Licensee further agrees to indemnify and hold harmless Licensor, its officers, employees, agents, successors, and assigns, from any and all claims, liabilities, damages, failure to comply with any current or prospective laws, attorney's fees, loss or damage to property whether owned by Licensor, Licensee and/or third parties to this Agreement, and/or injury to or death of any person arising out of the construction, maintenance, removal, replacement, rehabilitation, repair, or the location of the improvements or out of Licensee's activities on Licensor's right- of-way described hereinabove.

6. **Insurance.** Licensee, at its sole cost, shall maintain general liability and property damage insurance in the amount of **\$1 million** combined single limit for bodily injury and property damage, or such other amount as is determined sufficient by the City Manager and Director of Public Works, with insurers which are acceptable to Licensor, insuring against all liability of Licensee and its authorized representatives arising out of and in connection with Licensee's use or occupancy of Licensor's property pursuant to this Agreement.

All general liability insurance and property damage insurance shall insure performance by Licensee of the indemnity provisions of this Agreement. Licensor shall be named as an Additional Insured, and the policy shall contain cross-liability and primary insurance endorsements.

Each policy, or a certificate of the policy, shall be deposited with Licensor at the commencement of the term of this Agreement, and on renewal of the policy not less than twenty (20) days before expiration of the term of the policy. Licensee shall provide evidence of said insurance, the certificate and endorsements in the forms attached hereto as **Exhibit "C"**.

ATTACHMENT B

Licensee shall make arrangements with the insurers that the insurers shall provide Licensor with notice of cancellation or termination of the insurance at least thirty (30) days in advance of cancellation or termination. Licensee shall continuously maintain the insurance required by this Agreement until Licensor issues its Certificate of Release and Satisfaction of Covenants pursuant to Paragraph 4 hereof.

7. **Term.** This agreement and the rights granted hereunder may be terminated by Licensor upon giving written notice to Licensee at least ninety (90) days prior to the termination.

a. Should Licensee, its successors and assigns, at any time abandon the use of the property described in **Exhibit "B"** or any part thereof, or fail at any time to use the same for the purpose for which development of said property was approved for a continuous period of ninety (90) days, the rights and obligations hereby created shall cease to the extent of the use so abandoned and/or discontinued, and Licensor shall have the right to declare this Agreement terminated to the extent of the use so abandoned or discontinued.

b. Upon termination of the rights and privileges hereby granted, Licensee, at its own cost and expense, agrees to remove said improvements for which this license is granted and to return the right-of-way to the condition it was in prior to the execution of this License. Should Licensee in such event fail, neglect, or refuse to remove said improvement or return the right-of-way to such condition, such removal and restoration may be performed by Licensor at the expense of Licensee, which expense, including any attorney's fees, Licensee agrees to pay upon demand and, if not so paid, said expenses shall be paid in accordance with paragraph 3(b), above.

8. **Notices.** Any and all notices and demands required or permitted to be given hereunder, shall be in writing and shall be served either personally or by certified mail, return receipt requested, to the following addresses:

TO: City of Larkspur
400 Magnolia Avenue
Larkspur, CA 94939
Attention: Director of Public Works

AND

TO: Name of Property Owner(s)
Address
Larkspur, CA 94939

9. **Waiver.** The waiver by Licensor of any breach or any term, covenant, or condition herein shall not be deemed to be a waiver of such term, covenant, condition or any subsequent breach of the same, or any other term, covenant or condition herein contained.

10. **Authority of Parties.** Each individual executing this agreement in behalf of a corporation or other private entity shall represent and warrant that he/she is duly authorized

ATTACHMENT B

to execute this agreement on behalf of the corporation and/or entity, in accordance with the duly adopted resolution of the Board of Directors of such corporation, and/or entity, a copy of said resolution shall be provided to Licensor, along with the executed original of this agreement.

11. **Attorney's Fees.** In the event that either party is required to bring an action to enforce or interpret terms and conditions of this agreement, the prevailing party shall be entitled to payment of its attorney's fees, as well as expert witness fees.

12. **Assigns and Successors.** This agreement shall inure to the benefit and be binding upon each party's assigns and successors, and it is the intent of the parties that this license and its terms and conditions shall run with the land and be binding upon all successors in interest to the real property described in **Exhibit "A"** attached hereto.

IN WITNESS WHEREOF, the undersigned have executed this agreement as of the day and year first written above.

[NOTARIZED SIGNATURES BELOW]

CITY OF LARKSPUR

PROPERTY OWNER(S)

Director of Public Works

Name of Owner