

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California, hereinafter called the "County," and Denham LLC, a California Limited Liability Company. hereinafter called "Permittee."

WITNESSETH:

WHEREAS, Permittee is the owner of real property in the County of San Mateo, State of California, and has requested issuance of an Encroachment Permit from the County of San Mateo, to install cobblestones drainage swale on top of an existing drain pipe and portion of driveway approach within County right-of-way on Vista Lane fronting the property described in Exhibit "A" attached hereto; and

WHEREAS, the proposed cobblestones drainage swale with drain pipe beneath and portion of driveway approach are within the public right-of-way of Vista Lane ;

WHEREAS, there is no impediment to the use of the right-of-way at this time; and

WHEREAS, for and in consideration of and as a condition for approval by County of an Encroachment Permit, Permittee is willing to repair, restore, maintain, relocate and/or remove the proposed cobblestones from the right-of-way at Permittee's own expense upon demand of County should they become an impediment to the exercise of County's right within the right-of-way of Vista Lane ;

NOW, THEREFORE, IT IS HEREBY AGREED TO BY THE PARTIES, as follows:

1. The real property subject to this agreement is described in Exhibit "A" attached hereto. Upon annexation of said real property to any city, Permittee agrees to fulfill all of the terms of this agreement upon demand by such city as though the Permittee has contracted with such city originally. Any annexing city shall have the rights of a third party beneficiary.
2. Permittee agrees to repair, restore, relocate, maintain, and/or remove that portion of the cobblestone drainage swale with drain pipe beneath and driveway approach that are within the Vista Lane right-of-way at Permittee's own expense upon demand of County. Should Permittee fail to satisfy such demand, County may take such action as is necessary to protect the public interest within the right-of-way of Vista Lane and Permittee agrees to reimburse County for any and all costs incurred therewith.
3. In the event that Vista Lane is realigned or adjusted in elevation with the result that said encroachments must be altered, reconstructed or removed, the County may notify Permittee at any time in writing to commence the required alteration, reconstruction or removal. The notice shall be sufficient if mailed to the owner of record of said property at the address shown on the latest adopted County assessment roll. The notice shall describe the work to be done by the Permittee, or successor in ownership, the time within which the work shall commence and the time within which it shall be completed.
4. The Permittee shall indemnify and save harmless the County, its officers, agents, employee, and servants from all claims, suits or actions of every name, kind and description, brought for, or on account of injuries to or death of any person, including Permittee, or damage to property of any kind whatsoever and to whomever belonging, including but not limited to, the concurrent active or passive

negligence of the County, officers, agent, or employees and servants, resulting from the installation, maintenance, use and/or existence of said encroachment within the Vista Lane right-of-way as authorized and required by this agreement of Permittee, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of the Permittee to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in section 2778 of the California Civil Code.

5. Should legal action be necessary to enforce any provision of this agreement, Permittee agrees to pay all reasonable attorney fees and costs incurred by County in connection therewith.
6. This agreement shall be recorded by County. All covenants herein contained shall pertain to and run with the real property described herein, and this agreement shall apply to, bind and inure to the heirs, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers on the day and year first above written.


“County”

COUNTY OF SAN MATEO

BY: _____

**Jerry Hill, President
Board of Supervisors
County of San Mateo**

“Permittee”



GEORGE C. ROXAS
Managing Partner-Denham LLC

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO) SS.

On this 1st day of MAY, in the year 2002,
before me, Lynne THOMPSON, a Notary Public in and for
said State, personally appeared

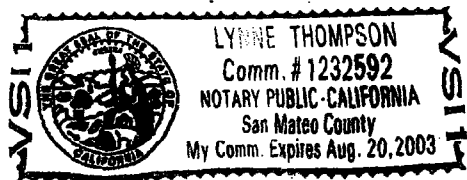
GEORGE C. ROXAS

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person that executed this instrument, on behalf of the partnership and acknowledged to me that the partnership executed it.

WITNESS my hand and official seal.

Signature

Lynne Thompson



“EXHIBIT A”

That certain real property as described in Document No. 2002-005152, filed in the Recorder’s Office of the County of San Mateo, State of California.