

**AGREEMENT**

**(ENCROACHMENT PERMIT)**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between the **COUNTY OF SAN MATEO**, a political subdivision of the State of California, hereinafter called the "County", and **THE OETTINGER 1979 TRUST**, as amended, (hereinafter called "Permittee"), with regard to the following facts:

**WITNESSETH:**

1. **WHEREAS**, Permittee is the lessee of real property in the County of San Mateo, State of California, under that certain Ground Lease dated July 15, 1997, as evidenced by that certain Memorandum of Lease dated June 7, 2000 and recorded in the County Recorder's office #2000-078688 on June 27, 2000, ("Ground Lease"); and Permittee has requested issuance of an Encroachment Permit from the County of San Mateo, to install curb, gutter, sidewalk, electrical conduit for lighting, sidewalk underdrains, retaining wall, handrail, catch basin, access ramp, street trees and tree grates which encroach into County rights-of-way on Alameda de las Pulgas and Ashton Avenue fronting the property described in **Exhibit "A"** ("Property") attached hereto and incorporated herein by reference;

2. **WHEREAS**, the proposed curb, gutter, sidewalk, electrical conduit for lighting, sidewalk underdrains, retaining wall, handrail, catch basin, access ramp, street trees and tree grates, hereinafter ..... "Encroachments", encroach into the public rights-of-way on Alameda de las Pulgas and Ashton Avenue;

3. **WHEREAS**, there is no impediment to the use of the rights-of-way by said proposed Encroachment at this time; and

4. **WHEREAS**, Permittee's facilities have been or will be installed pursuant to building encroachment permit(s) granted by County.

**NOW, THEREFORE, IN RELIANCE UPON THE FOREGOING RECITALS WHICH ARE INCORPORATED HEREIN BY REFERENCE, 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 and obligations under this Agreement of a successor governmental entity to the County.

2. Permittee agrees to repair, restore and maintain that portion of said Encroachments into the Alameda de las Pulgas and Ashton Avenue rights-of-way, with the exception of curb, gutter and sidewalk required to be repaired, restored or maintained as a result of work other than the repair of subsurface facilities installed by Permittee, at Permittee's own expense within thirty (30) days of written demand of County. Should Permittee fail to satisfy such demand within a reasonable period of time after receipt of written notice from the County describing with specificity the location and nature of the damage to the Encroachment, County may take such action as is necessary to protect the public interest within the rights-of-way of Alameda de las Pulgas and Ashton Avenue, including, but not limited to, undertaking repairs, restorations or maintenance of said Encroachments, and Permittee agrees to promptly reimburse County for any and all costs associated therewith. It is understood that the County shall exercise reasonable care to avoid damage to the Property during any work it perform hereunder.

3. In the event that it is planned for either Alameda de las Pulgas or Ashton Avenue to be realigned or adjusted in elevation with the result that said Encroachments must be altered, reconstructed or removed, the County shall be notified in writing, a minimum of thirty (30) calendar days prior to the commencement of County construction work, of the intended action and may perform the necessary reconstruction and removal work without obligation of reconstructing or repairing any subsurface or landscaping improvements that may be impacted by the work. The notice shall be sufficient if mailed to the current lessee of said property at the address shown on the last adopted County assessment roll. The notice shall describe the work to be done by County and shall provide the Permittee or successor in ground lease the time within which subsurface replacement work desired by the Permittee or successor in ground lease shall be completed, so as not to conflict with the County's work. It is understood that the County shall exercise reasonable care to avoid damage to the Property during any work it perform hereunder.

4. Emergency work required, as determined by the County, shall not be subject to the thirty (30) days notices stipulated herein.

5. Should an Assessment District (DISTRICT) be formed which replaces any of the Permittee's facilities, the DISTRICT shall be responsible for repairing or maintaining any of the facilities installed or financed through said DISTRICT.

6. The Permittee shall indemnify and save harmless the County, its officers, agents, employees, and servants from all claims, suits or actions of every name, kind and description, brought for, or on account of injuries to 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, agents, or employees and servants, resulting from the installation, maintenance, use and/or existence of said Encroachments within the Alameda de las Pulgas and Ashton Avenue rights-of-way as authorized by this agreement, 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.

Notwithstanding the above to the contrary, County shall defend, hold harmless and indemnify Permittee from any and all claims for injuries to persons and/or damages to the Property which arise out of damages caused to Permittee's Property by County or its successor(s) in performing work set forth hereinabove.

7. This agreement shall only be recorded by the County upon written consent of the Fee Owner. All covenants herein contained shall pertain to and run with the real property described herein, subject to Permittee's rights and obligations as contained in that Certain Ground lease referred to herein dated July 15, 1997, and this agreement shall apply to, bind and inure to the heirs, successors and assigns of the parties hereto.

8. This agreement shall not exempt Permittee from any obligations for the future repair of sidewalks as may be determined pursuant to Section 5600 et. seq. of the State of California Streets and Highways or other applicable laws as may be instituted by the County on an area basis.

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: \_\_\_\_\_

Rose Jacobs Gibson  
President, Board Of Supervisor

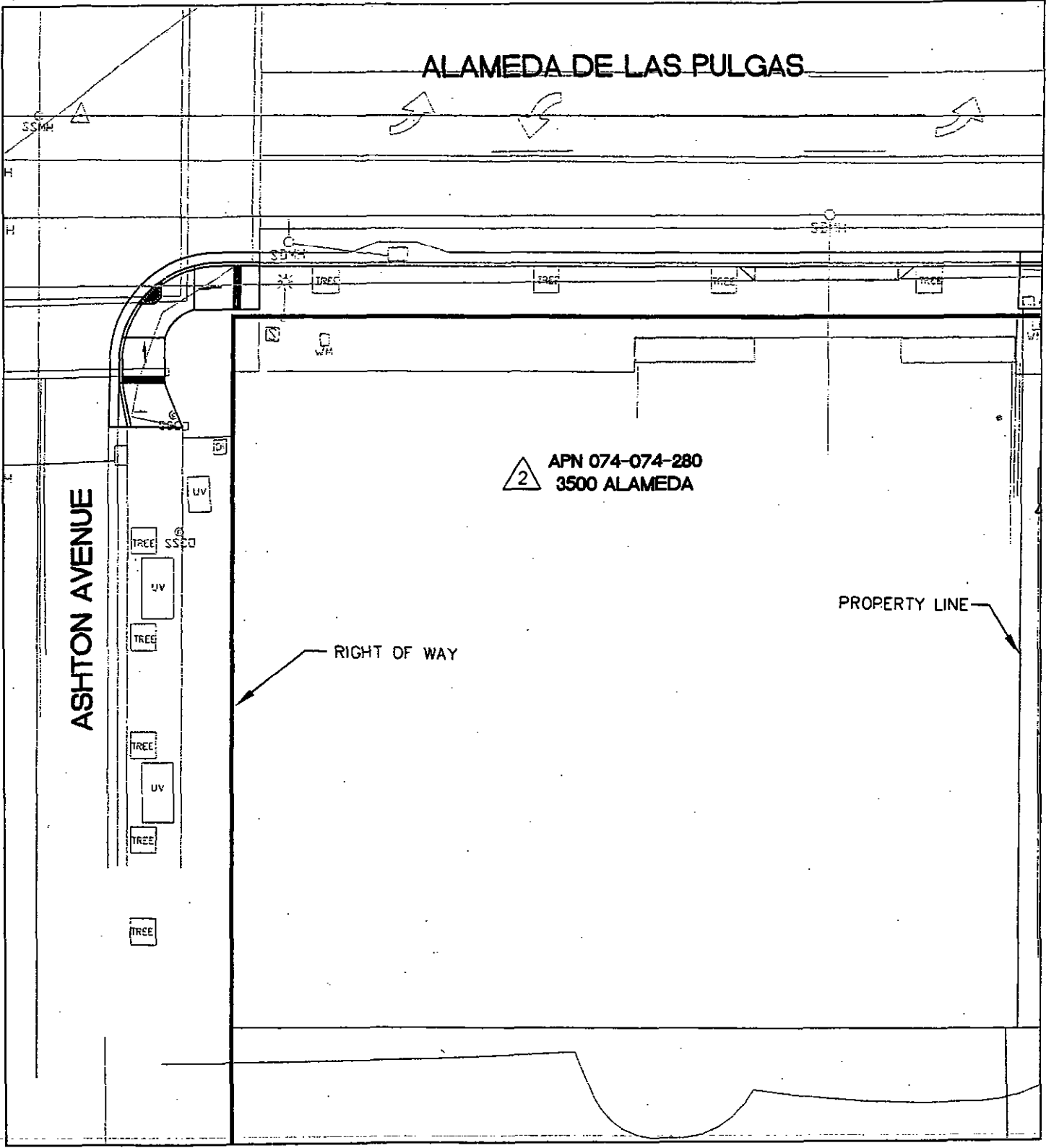
"PERMITTEE"

THE OETTINGER 1979 TRUST, as amended

BY: \_\_\_\_\_

*John R. Oettinger*  
John R. Oettinger, Trustee of THE  
OETTINGER 1979 TRUST, as amended

*November 7, 2003*



**3500 ALAMEDA DE LAS PULGAS**

NO SCALE

**EXHIBIT A**