

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 Michael Mitchell, a single man and Diana Roberts, an unmarried woman hereinafter called "Permittees."

WITNESSETH:

WHEREAS, Permittees are the owner of real property in the County of San Mateo, State of California, and have requested issuance of an Encroachment Permit from the County of San Mateo, to install a new landscape rock wall (the wall) and several trees which encroach into County rights-of-way on Alameda Ave. and Mirada Road fronting the property described in Exhibit "A" attached hereto; and

WHEREAS, the proposed wall and trees encroach into the public rights-of-way of Alameda Ave. and Mirada Road;

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

WHEREAS, for and in consideration of and as a condition for approval by County of an Encroachment Permit, Permittees are willing to repair, restore, maintain, relocate and/or remove the proposed wall and trees from the rights-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 rights-of-way of Alameda Ave. and Mirada Road;

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

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. Permittees agree to repair, restore, relocate, maintain, and/or remove that portion of the wall and trees that are encroaching into the Alameda Ave. and Mirada Road rights-of-way at Permittee's own expense upon demand of County. Should Permittees fail to satisfy such demand, County may take such action as is necessary to protect the public interest within the rights-of-way of Alameda Ave. and Mirada Road and Permittees agree to reimburse County for any and all costs incurred therewith.
3. In the event that Alameda Ave. and Mirada Road are realigned or adjusted in elevation with the result that said encroachments must be altered, reconstructed or removed, the County may notify Permittees 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 Permittees 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 Alameda Ave. and Mirada Road rights-of-way as authorized and required by this agreement of Permittees, 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:

Mark Church
President, Board of Supervisors
County of San Mateo

“Permittees”

MICHAEL MITCHELL

DIANA ROBERTS

ALL-PURPOSE ACKNOWLEDGMENT

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State of California

County of San Mateo as.

On 04 before me, Mark Church

personally appeared Michael Roberts
SIGNER(S)

personally known to me **-OR-** U 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.

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a ~é~WJ COMM. #1317771
NOTARY PUBLIC, CALIF. Op4-A.
My Comm4v-o Expires Aug. 13, 2005 :
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WITNESS my hand and official seal.

NOTARY'S SIGNATURE

“EXHIBIT A”

PARCEL “C”

All that certain real property situated in the County of San Mateo, State of California, being portions of Lots 1, 2, 3 and 4, Block 2, as shown on the map of “Miramar Beach,” as filed on February 19, 1906, in Book “B” of Maps, at page 55, and copies in Book 4 of Maps, at page 11, San Mateo County Records, more particularly described as follows:

Beginning at the most easterly corner of said Lot 1, Block 2;

Thence South $64^{\circ}06'05''$ West along the southeasterly line of said Lots 1, 2, 3 and 4, a distance of 100.44 feet;

Thence North $50^{\circ}05'17''$ West, a distance of 9.63 feet to a non-tangent intersection with the southwesterly line of said Lot 4, Block 2, and the arc of a curve, concave to the southwest;

Thence northwesterly along the southwesterly line of said Lot 4, and along the arc of said curve, to the left, whose center bears $63^{\circ}06'21''$ West from said point of intersection, with a radius of 2,900.90 feet and central angle of $1^{\circ}13'47''$, for an arc distance of 62.26 feet;

Thence North $64^{\circ}06'05''$ East, a distance of 93.88 feet to an intersection with the northeasterly line of said Lot 1;

Thence South $35^{\circ}04'13''$ East along the northeasterly line of said Lot 1, a distance of 72.07 feet to the point of beginning.