ENCROACHMENT PERMIT AGREEMENT

2900 Sand Hill Rd - Landscaping and Fence in Public Right-of-Way

The City of Menlo Park, a municipal corporation ("Menlo Park") hereby grants to Sharon Heights Golf & CC Inc (collectively "Owner") a revocable encroachment permit (the "Permit") for the real property commonly known as 2900 Sand Hill Rd (the "Property"), and more particularly described in the legal description attached hereto as Exhibit A for the use of, maintenance, and repair of a privately owned landscaping and fence within the public right of way across the frontage of 2900 Sand Hill (collectively, the "Facilities") within and beneath the surface of the public right of way in the City of Menlo Park, San Mateo County, California, depicted approximately on attached Exhibit B (the "Encroachment Area"), incorporated into this Encroachment Agreement.

1. ACCESS:

Menlo Park and Owner hereby agree:
Owner agrees to the following regarding access to the public right of way within the landscaped/fenced area along the subject property:
   a. Owner agrees to provide access to the City and any public utility companies requesting access to any existing utilities within the enclosed portion of the right of way.
   b. Owner agrees to remove the Facilities upon receipt of a 60-day advance notification from City, in the City’s sole and absolute discretion. Costs for removal of the Facilities shall be borne by the Owner. In the event Owner fails to do so, the City may remove the Facilities at the Owner’s cost and Owners shall reimburse City for such costs within ten (10) days of demand.

2. PERMITS:

Owner agrees to obtain all necessary permits from City for maintenance, removal, repair, or replacement. Permits may include, but are not limited to: Planning Permits, Building Permits, or Engineering Permits.
3. INDEMNIFICATION:

The Owner shall indemnify and hold harmless the City, its subsidiary agencies, their 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 death of any person or damage to property resulting from the maintenance and/or lack of maintenance of the Facilities required by this Agreement by Owner and/or resulting from the maintenance or lack of maintenance of the public right of way that is enclosed within the landscape/fenced area. The duty of the Owner to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require the Owner to indemnify the City, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782 of the California Civil Code.

4. RESTRICTIONS ON SURFACE USE:

Owner shall not construct any new structures or other permanent improvements within the Encroachment Area. Menlo Park reserves the right to continued use of the Encroachment Area for any and all public purposes and or utilities.

5. RUN WITH THE LAND:

The covenants and conditions in this Encroachment Permit Agreement, including but not limited to indemnification of the City, shall run with the land commonly known as 2900 Sand Hill Rd, Menlo Park, CA 94025 (A.P.N: 074-250-280), burden the Encroachment Area and bind and inure to the benefit of Menlo Park and Owner and their respective successors and assigns.

6. COUNTERPARTS:

This Agreement may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one instrument.

7. PERMITS

Owner shall obtain any appropriate permits and consents required by applicable law before performing future construction work within the Encroachment Area.

8. ATTORNEY'S FEES:

In the event of any litigation arising out of or to enforce the terms and provisions of this Agreement, the prevailing party in any such litigation shall be entitled to recover its attorneys' fees and costs of suit.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last date appearing by the parties’ signatures below.

OWNER:

Signature
Michael Nakano

Name

APPROVED AS TO FORM:

Date
11/6/18

William L. McClure, City Attorney

CITY OF MENLO PARK:

Signature
Justin Murphy

Name
Justin I.C. Murphy

Date
11/6/18

Title
Public Works Director

ATTEST:

Date
11/6/18

Judi Herren, City Clerk, City of Menlo Park
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Mateo

On 9/5/2018 before me, Samantha J. Dippert, Notary Public personally appeared Michael Nakahara

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: __________________________
Document Date: __________________________
Number of Pages: __________________________

Signer(s) Other Than Named Above: __________________________

Capacity(ies) Claimed by Signer(s)
Signer's Name: __________________________
☐ Corporate Officer — Title(s): __________________________
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: __________________________

Signer Is Representing: __________________________

Signer's Name: __________________________
☐ Corporate Officer — Title(s): __________________________
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: __________________________

Signer Is Representing: __________________________
(1) Photinia Fraseri 40 – 5 gallon

(2) Lantana Purple ground cover – 250 – 1 gallon
(3) Berberis Pygmy 150 – 5 gallon

(4) Rosemary Tuscan Blue – 100 – 5 gallon
(5) Colenema Album – 30 – 5 gallon