

HERMOSA LLC**AGREEMENT**

This Agreement is entered into by and between the City of Menlo Park ("City") and ~~HERMOSA LLC~~ ("Owner") with respect to that certain real property located at 1020 Hermosa Way, Menlo Park, CA (the "Property").

Recitals:

- A. Owner applied to the City for a heritage tree removal permit to remove two coast redwood trees in conjunction with the construction of a new home at the Property.
- B. City's Environmental Quality Commission (EQC) denied the heritage tree removal permit.
- C. The City's heritage tree ordinance require that owners maintain, preserve and protect heritage trees and require applicants to submit a heritage tree protection plan as part of the building permit submittal package for approval by the City Arborist.
- D. The City issued a building permit for the construction of a new home on the Property, subject to a heritage tree protection plan relating to the preservation and protection of two coast redwood trees in accordance with an arborist report prepared by Urban Tree Management Company dated August 13, 2015 ("Redwood Existing Conditions Report and Mitigation Measures").
- E. Subsequently, construction activity occurred at the Property in violation of the terms and conditions of the Tree Report, jeopardizing the health of the two redwood trees required to be preserved and protected.
- F. At the request of the City, Owner engaged the services of Urban Tree Management Company and Davey Resource Group. to inspect the damaged trees, which companies made recommendations regarding the care of the damaged trees for their long-term preservation.
- G. Work was stopped on the construction project until Owner's contractor complied with the City Arborist's requirements and the recommendations of Urban Tree Management Company and Davey Resource Group. Later, the trees appeared to be in declining health due to failure to comply with the requirements and recommendations and Owner was required to implement additional measures to protect and preserve the two heritage trees.
- H. City has expended time and money to pursue the violations and to require the Owner and her contractor to comply with the heritage tree protection plan and conditions of issuance of the building permit.

- I. City is concerned that the two trees may not survive and requires assurances and a cash bond/deposit to ensure the cost of replacing the trees with mature trees.
- J. City Arborist prepared an appraisal of the value of the damaged trees, which appraisal has determined that each tree had a value of \$29,000 prior to the damage to its root system, totaling \$58,000.
- K. City and Owner desire to enter into this Agreement settling the matter of the heritage tree violations and to set forth the terms and conditions under which Owner and/or future owners will maintain/replace the trees on the Property.

NOW, THEREFOR THE PARTIES AGREE AS FOLLOWS:

- 1. Owner shall implement all of the recommendations and mitigation measures set forth in the report prepared by Urban Tree Management Company dated August 13, 2015, and Davey Resource Group report dated July 18, 2016, and all other recommendations of the City Arborist to ensure the health, vitality and stability of the damaged trees. Such work shall be monitored by an independent arborist (Urban Tree Management Company or such other arborist as may be approved by the City) and a report filed with the City confirming such work has been completed. Owner shall continue to provide annual monitoring reports to the City for the first five (5) years following final building permit sign off and shall implement or cause to be implemented any and all additional recommendations for the preservation of the trees.
- 2. Upon execution of this Agreement, Owner shall deposit the sum of \$58,000 with the City to be held by the City for a period of sixty (60) months from the date of completion of the single family home ("Security Account"). Such funds shall not be released until the expiration of such 60-month period and then only upon issuance of a tree report by the City Arborist confirming that the two heritage trees are in a healthy, vital and stable condition.
- 3. If at any point during the time the funds are held in the Security Account, either of the trees die, is required to be removed or is determined by the City to be in poor condition, Owner shall be required to replace either of the damaged tree with a mature tree having a value as determined by the City of not less than \$29,000 each. Such replacement tree shall be placed along the Hermosa Way frontage in a location and manner that will provide comparable shade, and shielding of the house from properties across Hermosa Way. All costs and expense of the replacement tree, together with all costs incurred by the City in processing and approving Owner's request to replace the tree shall be borne by the Owner. The funds in the Security Account may be used to pay any such costs and/or expenses to the extent there are sufficient funds in the Security Account.
- 4. In the event Owner does not comply with the requirements of Paragraph 3 of this Agreement within ninety (90) days of written demand by City, Owner shall forfeit

all funds in the Security Account to the City. The City may, but shall not be required to, replace the damaged tree(s) with such funds or may retain such funds and utilize them in its street tree replacement program at other locations in the City.

5. Upon execution of this Agreement, Owner shall pay a "fine" to the City in the amount of \$5,000.00 to cover the City's costs and expenses of obtaining an appraisal of the damaged trees, preparing this Agreement, additional inspections and staff time expended in addressing the violation of the terms of the Urban Tree Management Report, and other costs and expenses incurred by the City in resolving the violation of the heritage tree ordinance and the terms and conditions of the building permit.
6. This Agreement constitutes the entire Agreement between the parties with respect to the violation of the heritage tree ordinance and building permit for damage to the two heritage coast redwood trees. Except as modified herein, all of the remaining terms and provisions of the building permit are and shall still be applicable to the project.
7. In the event of any violation of the terms and conditions herein and either party initiates litigation or arbitration, the prevailing party in such litigation or arbitration shall be entitled to recover its attorney's fees and costs of such proceeding.
8. Owner acknowledges that it is the responsibility of the owner of the Property, and any future owners of the Property to maintain the two heritage coast redwood trees at the front of the Property in accordance with the terms and provisions of this Agreement. Owner shall provide a copy of this Agreement to any future owner of the Property and shall provide the City with a copy of an acknowledgement by such future owner that he/she/they are aware of the City's heritage tree ordinance and the terms and provisions of this Agreement and that it is the responsibility of the owner to maintain and preserve the two heritage coast redwood trees in accordance with the terms and provisions of the ordinance and this Agreement.

Dated: September __, 2016

November 16
Dated: September __, 2016

~~_____~~ HERMOSA LLC.
By: *[Signature]* *MARION HERMOSA LLC*
ROD EDMISTON
CITY OF MENLO PARK

By: *[Signature]*
JUSTIN MURPHY
PUBLIC WORKS DIRECTOR



OFFICE OF THE CITY ATTORNEY

1100 ALMA STREET / MENLO PARK, CA 94025 / 650.324.9300 / FAX 650.324.0227

September 22, 2016

Joy Zhu
Hermosa LLC
18625 Sutter Blvd #500
Morgan Hill, CA 95037

Re: Resolution of Heritage Tree Violations
1020 Hermosa Way, Menlo Park, CA

Dear Ms. Zhu:

As you are aware there have been multiple violations of the City of Menlo Park Heritage Tree Ordinance involving the construction activities at your property located at 1020 Hermosa Way, Menlo Park, California. This has involved a significant amount of staff time to deal with the violations.

At this time, we don't know if the remediation efforts that have been undertaken will be successful in saving the two heritage coast redwood trees. In addition, to date the City has not levied a "fine" to reimburse the City for the costs and expenses in dealing with these violations. Accordingly, attached is an Agreement for your review and approval to resolve these outstanding issues. Until these issues are resolved, we cannot issue final building permit sign off or any other City approvals/sign offs on work performed for this project. If the attached Agreement is acceptable to you, please date and sign it and then deliver two checks made payable to the City of Menlo Park, one in the amount of \$5,000.00 to cover the fine/reimbursement for the City's time and expense in addressing the violations, and a second check for \$58,000.00 which will be held for 60 months to ensure replacement of the two trees should they not survive for that time. If at the end of 5 years, the trees are healthy, the \$58,000 will be refunded to you. If the trees do not survive, then you will have to replace the trees with mature trees of equivalent value to the satisfaction of the City. Please note that the Agreement requires

that you have any buyer acknowledge the requirements of the Agreement and agree to comply with the terms and provisions of the Agreement.

Please feel free to contact me if you have any questions. I can be reached at (650) 324-9300 or wlm@jsmf.com .

Sincerely,



William L. McClure,
City Attorney