

Control No. 2009-007

Recording Requested by
and when Recorded, return to:

CITY OF MILPITAS
455 E. CALAVERAS BOULEVARD
MILPITAS, CA 95035-5479
Attn: City Clerk

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE
§§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

Document Transfer Tax is \$0.00

() Computed on full value of property conveyed

() Computed on full value less value of liens and encumbrances remaining

City transfer tax is \$0.00

APN: 088-37-076

Public Right of Way Encroachment Agreement

This Encroachment Agreement (“Agreement”) is entered into between The City of Milpitas, a municipal corporation (“the City”) and The Presbytery of San Jose, a Corporation (“Owner”).

RECITALS

- A. Owner hereby certifies that it is presently the owner-in-fact of the parcel of real property along 1000 South Park Victoria Drive in Milpitas, California, more particularly described in Exhibit A (Legal Description).
- B. Owner has requested permission from the City to enter upon, utilize, construct, operate and maintain improvements within portions of a public right of way encumbering and adjacent to its property (said encroachment unto the public right of way referred to herein as the “Encroachment Area” and set forth with greater particularity in Exhibit B).
- C. The purpose of this Agreement is to document the City’s authorization of such encroachment and to describe the terms and conditions governing such encroachment.

The parties therefore agree as follows:

- 1. City’s Title. By acceptance of the benefits hereunder, Owner acknowledges the City’s title to and interest in the public right of way and waives any right to contest the validity of such title or interest.
- 2. Non-Exclusive Encroachment. The Encroachment Area shall be used for encroachment of improvements onto the public right of way consisting of street landscaping consisting of palms trees, irrigation systems, and appurtenant facilities such as up lighting (“the Improvements”), as described and limited in Exhibit B. The Owner’s installation, operation, maintenance, and removal of the of the Improvements shall not interfere with the use and enjoyment of the public right of way by the City or other persons and entities, including the use by public and private utilities within the Encroachment Area. In the event of temporary interferences, Owner shall be solely responsible for obtaining permission from the City and owners of other facilities within the public right of way, coordinating its construction activities with the City and other entities, and satisfying any expenses resulting from such interference.

3. Maintenance of Improvements So long as the Agreement remains in effect, Owner shall be solely responsible for maintenance of the improvements. At a minimum, the Owner shall maintain the Improvements in a neat, clean, safe and orderly condition. If Owner fails to maintain the improvements consistent with the standards and requirements of the City, the City may, but shall not be required to, maintain or destroy and remove the Improvements at the Owner's expense. The City shall bill Owner for its costs, and the Owner agrees to pay such costs. Any delinquent amounts may be collected by any legal means. Furthermore, by signing this Agreement, the Owners consents by agreement to the placement of any unpaid invoice amounts on the property tax roll to be collected in the same manner and at the same time as, together with and not separately from general ad valorem taxes. In addition, the Owner agrees that such amounts shall be subject to the same procedures, sale and lien priority in case of delinquency as is provided for ad valorem taxes.

4. Construction Standards Construction and maintenance of the improvements will conform in all respects to the standards and requirements of the City and the Milpitas Municipal Code and shall be subject to the City's normal inspection and approval procedures.

5. Indemnity/Hold Harmless Owner hereby agrees to defend, indemnify and hold harmless the City, its elected and appointed boards, officers, agents and employees, from any liability, claims or damages for personal injury or death as well as for property damage which may arise as a result of this Agreement, whether due to acts or omissions of Owner or any subcontractor, agent, employee or other persons or entities directly or indirectly employed by or acting as agent or under the direction of Owner. In the event of any such liability, claims or damages, Owner will defend the City, its agents and employees, with counsel reasonably acceptable to the City. The parties acknowledge that this indemnity provision is a material inducement for the City to grant this authorization and that the City would not grant this authorization without these indemnity provisions.

6. Termination/Revocation This Agreement is terminable at will by the City. Owner shall vacate the Encroachment Area upon receipt of 90 days prior written notice of termination from the City. Such notice to terminate may be issued administratively by City staff. Additionally, a notice of such termination, recordable in form, either by Resolution of Termination, or other such acceptable form, may be recorded in the Office of the County Recorder, County of Santa Clara. Upon the City's issuance of a notice of termination, Owner shall, within the 90-day period, remove or relocate the Improvements placed, constructed or maintained within the Encroachment Area by Owner.

If Owner fails to comply with such termination notice within the time prescribed, the City may remove and destroy the Improvements without reimbursement to Owner, its successors and assigns, and the cost of such removal shall be invoiced and paid by Owner, its successors and assigns, to the City and shall constitute a debt owing to the City that may be collected by any legal means. Furthermore, by signing this Agreement, the Owners consents by agreement to the placement of any unpaid invoice amounts on the property tax roll to be collected in the same manner and at the same time as, together with and not separately from general ad valorem taxes. In addition, the Owner agrees that such amounts shall be subject to the same procedures, sale and lien priority in case of delinquency as is provided for ad valorem taxes.

7. Attorney's Fees In the event of legal action between the parties with respect to this authorization, each party shall bears its own attorney's fees and costs.

8. Compliance with other Conditions Owner acknowledges that the authorization contained herein is in addition to and not in lieu of any other Agreements, inspections or approvals which Owner may need to obtain from the City, from other utility providers or property owners with respect to its construction of the improvements and that Owner must comply with all additional conditions imposed by the City with respect to construction of the improvements.

9. Encroachment Authorization Based upon the foregoing terms and provisions, the City hereby authorizes encroachment by Owner upon the Encroachment Area.

10. Successors and Assigns This authorization will bind and inure to the benefit of the parties, the respective heirs, successors and assigns. This authorization is intended to run with the benefited property as a covenant running with the land and the obligations of Owner described herein will constitute continuing obligations of all persons or entities succeeding to Owner's ownership interest in such benefited property.

11. Acknowledgement: Owner desires the construction and placement of its Improvements, buildings and other facilities in close proximity to existing utilities within the public right of way and recognizes the inherent risk to the building for any necessary utility repair work. Owner waives any claim against City for damages to the Building or disruption to business resulting either directly or indirectly from any work performed by the City or its contractors with respect to the installation, maintenance, inspection, repair, or removal of existing utilities. No structure or wall shall be constructed within the City's easement, except for planter boxes or conventional fencing (chain link, steel or wood). City access to the easement areas shall be maintained at all times.

12. Right of Entry. District and its agents shall have the right, and the Owner shall permit the City and its employees, agents, and assigns to enter onto and upon the Improvement at all times for any purpose.

13. Damage to Improvements. It is also agreed that while using, maintaining and/or improving the public right of way, the City will take reasonable care to not damage the Owner's Improvements. However, if any of the Owner's Improvements should become damaged, the City shall not be obligated in any way to repair or replace any of the Improvements and it shall become the obligation of the Owner to make said repairs should it become necessary.

Executed on this _____ day of _____, 2009, at Milpitas, California.

OWNER:

The Presbytery of San Jose, a Corporation

By: _____

CITY OF MILPITAS, A MUNICIPAL CORPORATION:

By: _____
Thomas C. Williams
City Manager

By: _____
Michael J. Ogaz
City Attorney as to form

ATTACH ACKNOWLEDGMENT

NOTE: A Notary acknowledgment must be completed for signatures

THE CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED ABOVE

EXHIBIT A
Legal description

Real property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THAT CERTAIN MAP ENTITLED, "TRACT NO. 4010, PARKTOWN, UNIT NO. 3" FILED IN BOOK 197 OF MAPS, AT PAGES 8 AND 9, SANTA CLARA COUNTY RECORDS, SAID POINT BEING THE POINT OF INTERSECTION OF SAID SOUTHERLY LINE AND THE CENTER LINE OF PARK VICTORIA DRIVE, AS SHOWN ON SAID MAP, THENCE FROM SAID POINT OF BEGINNING, ALONG SAID SOUTHERLY LINE NORTH 76° 57' 09" EAST, 491.75 FEET; THENCE AT RIGHT ANGLES, SOUTH 13° 02' 51" EAST, 415.00 FEET, THENCE AT RIGHT ANGLES, SOUTH 76° 57' 09" WEST 491.75 FEET; THENCE AT RIGHT ANGLES NORTH 13° 02' 51" WEST, 415.00 FEET TO THE POINT OF BEGINNING.

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EXHIBIT B

Encroachment Area

