

RECORDING REQUESTED BY:

CITY OF OCEANSIDE

AUG 02, 2007 12:29 PM

AFTER RECORDING RETURN TO:

F8
5P

CITY CLERK
CITY OF OCEANSIDE
300 NORTH COAST HIGHWAY
OCEANSIDE, CA 92054

5847

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 19.00
PAGES: 5

2007-0517616

SPACE

APN: 154-230-37

City Clerk Doc# 07-D0426-4

**ENCROACHMENT REMOVAL AGREEMENT
PROPOSED ENCROACHMENT ON EASEMENT
(ERA -02-2007)**

THIS ENCROACHMENT REMOVAL AGREEMENT ("AGREEMENT") dated solely for identification this 8th, day of March, **2007**, by and between the **CITY OF OCEANSIDE**, a municipal corporation, (hereinafter called "CITY"), and, **Joseph L. White, a Married Man as his sole and separate property**, (hereinafter called "OWNER").

WHEREAS, OWNER is the owner of that certain real property located at **1764 Troy Lane** in the City of Oceanside, County of San Diego, State of California, (herein after called the "PROPERTY"), more particularly described as follows:

Parcel 1 of Parcel Map No. 9561, in the City of Oceanside, County of San Diego, State of California, filed in the office of the County Recorder of San Diego County, January 8, 1980 as file No. 80-007752 of official records.

WHEREAS, OWNER has requested that CITY allow OWNER to build and maintain a **private telephone line**, a **private coaxial cable line** and appurtenances, (hereinafter called the "ENCROACHMENTS" for the use and benefit of said owner's Property, in, on, over, across, and through a **five (5) foot and a ten (10) foot, WATER EASEMENT**, recorded **March 6, 1980** as Document No. **80-077330** and **February 21, 1974** as Document No. **74-043051** filed in the Office of the County Recorder of said County (hereinafter called the "EASEMENTS"), and through the **Troy Lane fifty (50) foot wide** right-of-way (hereinafter called the RIGHT-OF-WAY), which said ENCROACHMENTS, EASEMENTS and RIGHT-OF-WAY are shown on Exhibit "A", attached hereto and incorporated herein.

NOW, THEREFORE, in consideration of CITY granting permission for the ENCROACHMENT within the EASEMENTS and RIGHT-OF-WAY, OWNER covenants and agrees as follows:

(1) The ENCROACHMENT shall be constructed and installed in a good workman like manner in substantial conformance with the plans and specifications therefore on file in the CITY'S Public Works Department, and as briefly described on Exhibit "A".

(2) OWNER and it's heirs, successors and/or assigns in interest shall maintain the permitted ENCROACHMENT at all times in a decent, safe and sanitary condition in accordance with general prevailing standards of maintenance, and pay all cost and expenses incurred in doing so. However, nothing herein shall be construed to require OWNER to maintain, replace or repair any CITY owned facility such as pipeline, conduit, cable located in or under said ENCROACHMENT, except otherwise provided herein.

(3) If CITY or other public facilities or improvements are damaged by the installation or presence of the permitted ENCROACHMENT, as determined in the sole opinion of the City Engineer, OWNER shall be responsible for the cost of repair.

(4) If any of the ENCROACHMENT (s) actually built or installed during construction vary from the permitted ENCROACHMENT(s) approved herein; such changes or variations must be approved in advance by the City and shall be shown on **as-built** plans.

(5) OWNER shall at all times relieve, indemnify, protect, defend and save the CITY and any and all of its boards, officers, agents, and employees harmless from any and all claims, liabilities and demands, actions, proceedings, losses, liens, costs, attorney and expert fees and judgments, civil fines, and penalties of any nature whatsoever relating to the ENCROACHMENT or this Agreement in regard to or resulting from the construction, maintenance, state of use, repair or presence of the ENCROACHMENT permitted hereunder, including but not limited to attorney's fees and expenses incurred in legal actions, death, injury, or damage that may be caused directly or indirectly by:

- a. **Condition.** Physical presence of the ENCROACHMENT, or any unsafe or defective condition in or on the EASEMENTS and RIGHT-OF WAY of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use of the EASEMENTS and RIGHT-OF-WAY by OWNER and its ENCROACHMENT and/or
- b. **Operation.** Any operation, use, or occupation conducted on the EASEMENTS and RIGHT-OF-WAY by OWNER or any third party, directly or indirectly related to or caused by the presence of the ENCROACHMENT; and/or
- c. **Negligence.** Any act, omission, or negligence on the part of OWNER, its employees, agents, sub lessees, invitees, and/or licensees; and/or
- d. **Compliance.** Any failure by OWNER to comply or secure compliance with any of the terms or conditions of this Agreement.

(6) OWNER shall remove, at OWNER'S expense, said ENCROACHMENT within thirty (30) days following written notice and as directed by the CITY, or in the event of an emergency, upon the date so indicated by the CITY. No reason is required for the removal of the ENCROACHMENT; said removal being at the sole discretion of the City Engineer. Should OWNER fail to remove the Encroachment or any part thereof within this time period or within any extension in writing granted by the CITY, the CITY may cause such work to be done, and the costs thereof shall be a charge to and may become a lien upon OWNER'S property.

(7) The CITY shall have no responsibility or liability for, and OWNER agrees to hold the CITY harmless from, any damage to the ENCROACHMENT from any cause, including but not limited to damage resulting from the construction, maintenance, state of use, repair, and presence of the CITY facilities, operation or occupation within the EASEMENTS and RIGHT-OF-WAY.

(8) Whenever it is deemed by City Engineer that a public improvement cannot be economically placed, replaced, or maintained due to the presence of the ENCROACHMENT, OWNER agrees to provide an alternate EASEMENTS and RIGHT-OF-WAY and/or relocate the public improvement subject to the approval of the CITY, all at no cost or expense to the CITY.

(9) Whatever rights were acquired by CITY with respect to the EASEMENTS and RIGHT-OF-WAY shall remain and continue in full force and effect and in no way be affected by CITY'S grant of permission contained in this Agreement.

(10) Any construction performed prior to the CITY'S final approval is at the OWNER'S risk and may be subject to removal, fines and penalties.

(11) This Agreement and all the obligations contained therein shall constitute covenants running with the land and shall be binding on and for the benefit of OWNER, its transferees, successors and assigns, and any other present or future interest holders or estate holders of any portion or all of the property. This Agreement shall be recorded against the property by the OWNER at his/her expense.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

Owner:

Joseph L. White, a married man as his
Sole and separate property

By: Joseph L. White

Dated: 3/8/07

By: _____

Dated: _____

City:

City of Oceanside

By: [Signature]
City Engineer

Dated: 7.30.07

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: [Signature]
City Attorney

Dated: _____

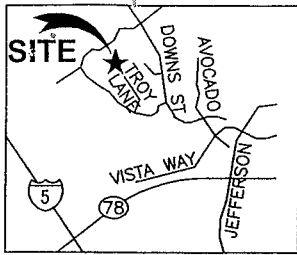
OWNER'S SIGNATURE MUST BE NOTARIZED

EXHIBIT "A"

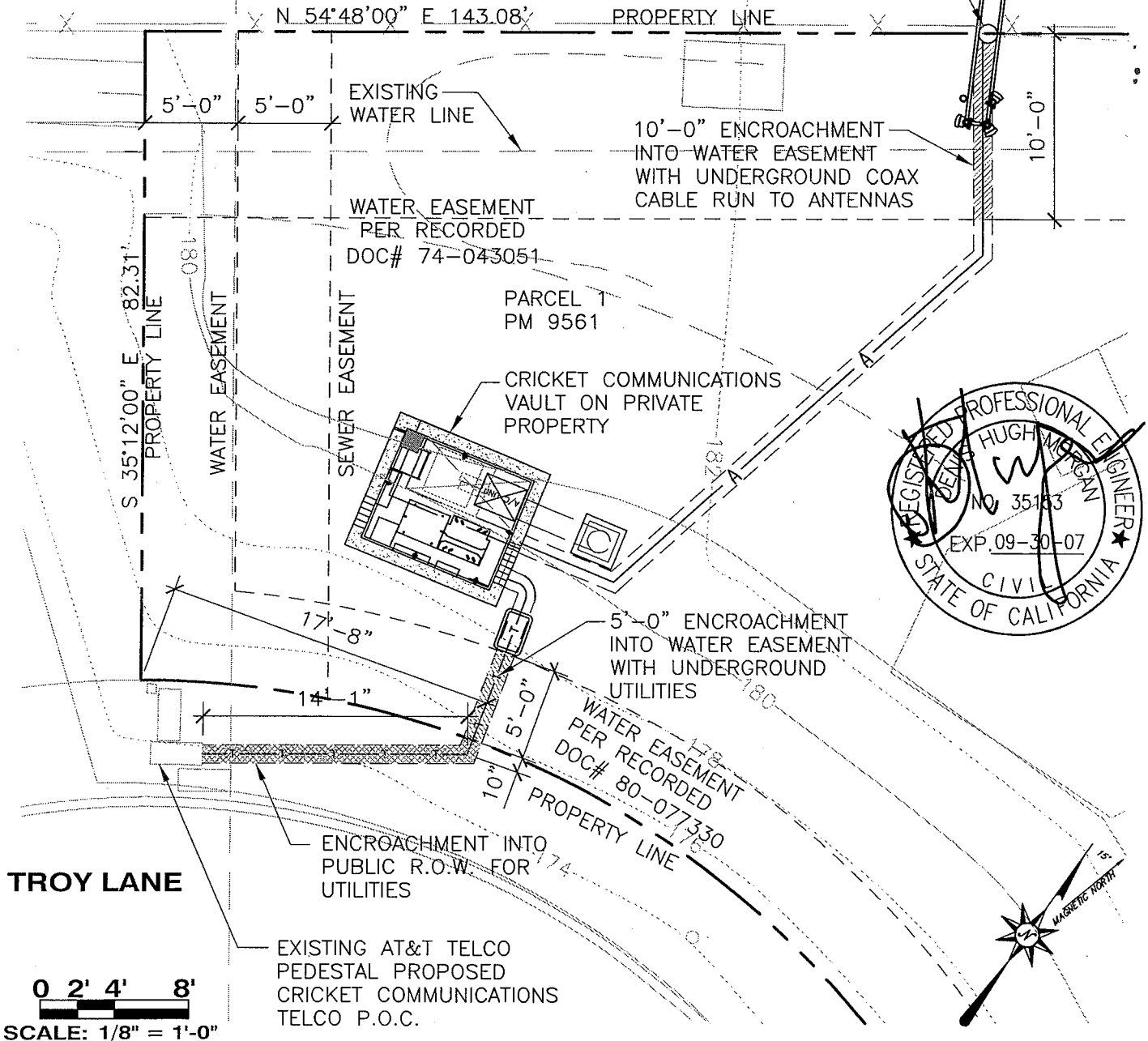
LEGEND

----- EASEMENT
 - - - - - PROPERTY LINE

5851

VICINITY MAP
N.T.S.

EXISTING 35'-0" HIGH SDG&E DISTRIBUTION
 POLE, PROPOSED CRICKET COMMUNICATIONS
 ANTENNA LOCATION (3) ANTENNAS, (1)
 ANTENNA PER SECTOR



OWNER: CRICKET COMMUNICATIONS INC.

SITE ADDRESS: 1764 TROY LANE, OCEANSIDE, CA 92054

ENGINEER: SAC WIRELESS
 11300 SORRENTO VALLEY RD., SAN DIEGO, CA 92121

APN# 154-230-37

FILE# ERA-07-002

DATE: 02/21/07

SHEET 1 OF 1

CITY OF OCEANSIDE

PUBLIC WORKS DEPARTMENT
 ENGINEERING DIVISION
 PLAT TO ILLUSTRATE ENCROACHMENT