RECORDING REQUESTED BY:

CITY OF OCEANSIDE

AFTER RECORDING RETURN TO:

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

APN: SPACE ABOVE FOR RECORDERS USE ONLY
City Clerk Doc#

DOCUMENTARY TRANSFER TAX $ None

(_____, City of Oceanside)
Signature of declarant or agent determining tax - Firm name

ENCROACHMENT REMOVAL AGREEMENT
ENCROACHMENT CONSTRUCTED ON RIGHT-OF-WAY
(ERA)

THIS ENCROACHMENT REMOVAL AGREEMENT (hereinafter called "AGREEMENT") dated solely for identification this _____, day of _____, **20** , by and between the **CITY OF OCEANSIDE**, a municipal corporation, (hereinafter called the "CITY"), and, _____**,** (hereinafter called the "OWNER").

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

LEGAL DESCRIPTION IS DESCRIBED ON EXHIBIT "A" ATTACHED HEREON AND MADE A PART THERE OF.

WHEREAS, OWNER has requested that CITY allow OWNER to maintain a _____**and appurtenances,** (hereinafter called the " ENCROACHMENT" for the use and benefit of said owner's PROPERTY, encroaching approximately ____ foot in, on, over, across, and through the _____ a 40 feet wide right-of-way, (hereinafter called the "RIGHT-OF-WAY"), which said ENCROACHMENT and RIGHT-OF-WAY are shown on Exhibit "B", attached hereto and incorporated herein.

WHEREAS, OWNER constructed the ENCROACHMENT without permit, permission or knowledge of the City.

NOW, THEREFORE, in consideration of CITY granting permission for the ENCROACHMENT to remain within the 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 City of Oceanside and San Diego County regional standard drawings, and as described briefly on Exhibit "B".

(2) OWNER and its 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, or cable located in or under said ENCROACHMENT, except as otherwise provided herein.

(3) If the City Engineer, in his or her sole discretion, determines that the CITY's or other public agency's facilities or improvements are damaged by the installation or presence of the permitted ENCROACHMENT, 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 contract with Dig Alert Services and provide them with necessary documentation, information and applicable fees to add the location of the ENCROACHMENT to their inventory. (added when applicable)

(5) OWNER shall at all times relieve, indemnify, protect, defend and hold harmless the CITY and its boards, officers, agents, and employees against any and all claims, liabilities, demands, actions, proceedings, losses, liens, costs, attorney and expert fees, judgments, civil fines, and penalties of any nature whatsoever relating to the ENCROACHMENT or this agreement including but not limited to claims in regards to or resulting from the construction, maintenance, state of use, repair or presence of the ENCROACHMENT permitted hereunder, and 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 RIGHT-OF-WAY of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or presence of the OWNER and its ENCROACHMENT and/or

b. Operation. Any operation, use, or occupation conducted on the 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 CITY facilities, operation or occupation within the RIGHT-OF-WAY.

(8) Whenever it is deemed by the 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 alternative 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 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. <u>This Agreement shall be recorded against the property by the City Clerk at OWNER'S expense</u>.

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:

Name:_____

Signature:_____
(Name, Title)

Dated: _____

Signature:_____
(Name, Title)

City:

City of Oceanside

By: _____
City Engineer

Dated: _____

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____

Dated:_____ City Attorney Dated