

RECORDING REQUESTED BY
CITY OF YORBA LINDA

THIS AREA FOR RECORDER'S USE ONLY

When recorded, return to:

City of Yorba Linda
Engineering Division
4845 Casa Loma Avenue
Yorba Linda, CA 92885

EXEMPT (FREE) RECORDING REQUESTED
UNDER GOVERNMENT CODE 27383

DECLARATION OF RESTRICTIVE COVENANTS
(ENCROACHMENT ON CITY EASEMENT)

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made this _____, 2021, by and between CITY OF YORBA LINDA ("CITY"), a public agency, and PHUC TITO NGUYEN and HANG THANH BUI ("DECLARANT"), with reference to the following:

RECITALS

- A. The DECLARANT owns real property located at 4002 ELSIE DRIVE, Yorba Linda, California 92886 (APN 323-191-31) ("Subject Property"), which is more particularly described as follows:
- LOT 11 OF TRACT NO. 16595, IN THE CITY OF YORBA LINDA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK NO. 890 PAGE(S) 23 TO 30 INCLUSIVE, OF MISCELLANEOUS MAPS. RECORDS OF ORANGE COUNTY, CALIFORNIA.
- B. CITY right of way, as identified on TRACT MAP NO. 16595, Official Records of Orange County, California ("Easement"), across a portion of the Subject Property. Within the Easement, CITY owns a 20-FOOT-WIDE STORM DRAIN EASEMENT ("City Facility").
- C. The DECLARANT desires to construct improvements that include but are not limited to concrete pavement, garden rosetta arches, and a bench (collectively herein referred to as "Improvements") within and along the Easement area (hereinafter referred to as an "Encroachment"), as illustrated in Exhibit "A" attached hereto and incorporated by reference herein.
- D. CITY conditionally consents to the Encroachment within and along the Easement area as stipulated in this Declaration. DECLARANT is aware that the Improvements will affect the CITY's use of the Easement and DECLARANT will be liable for any costs arising out of or related to the Encroachment.

NOW, THEREFORE, incorporating the above recitals, CITY and DECLARANT hereby declare as follows:

1. **Covenant Running with Land.** This Declaration constitutes a covenant running with the land, as provided by California Civil Code Section 1468, and shall benefit, burden, and bind the DECLARANT and the CITY. The term “DECLARANT” shall include not only the present DECLARANT, but also the DECLARANT’S heirs, successors, executors, administrators, and assigns.
2. **Damages to City Facilities.** DECLARANT assumes full responsibility and liability and shall pay for any cost(s) or damage(s) to the City Facilities and appurtenant structures, arising from or related to the construction, existence, removal, and/or use of the Improvements. CITY shall not be responsible for any cost(s) or damage(s) to the City Facilities and appurtenant structures that arise from the Encroachment.
3. **Damages to Third Parties.** DECLARANT agrees to indemnify, defend and hold harmless CITY and its officers, directors, employees, agents, consultants, and other authorized representatives from any and all liability, claims, demands, damages (whether contract or tort, including personal injury, death, or property damage), costs, and financial loss, including all costs and expenses of litigation or arbitration, which result or are claimed to have resulted directly or indirectly from the Encroachment, including but not limited to the construction, existence and/or use of the Improvements.
4. **Notice of Intent to Remove Improvements.** DECLARANT shall notify City of its intent to remove any and all Improvement(s) in the Easement area at least fourteen days prior to removal.
5. **Damages to Improvements.** DECLARANT acknowledges that the CITY may damage or demolish the Improvements so that it can reasonably access or conduct reasonable work within and under the Easement area. CITY, its officers, directors, employees, agents, consultants, and other authorized representatives shall not be responsible for any damage(s) to or because of the Improvements which result from CITY's exercise of its rights under the Easement. DECLARANT waives all known, unknown, and future claims, liabilities, causes of action, and expenses against CITY, its officers, directors, employees, agents, consultants, and other authorized representatives for losses and damages to the Improvements and from any obligation to protect, preserve, repair, or replace the Improvements. The construction, use, protection, repair and replacement of the Improvements shall be entirely the risk and obligation of DECLARANT, even if damage is caused by CITY.
6. **Recording of Agreement.** This Declaration shall be recorded in the Office of the Recorder of the County of Orange, California, and shall constitute notice to all successors and assigns of the title to the Subject Property of the rights and obligations set forth herein.
7. **Severability.** The invalidity or unenforceability of any provision of this Declaration shall in no way affect the validity or enforceability of any provision hereof.

8. **Governing Law.** This Declaration shall be governed by, and construed in accordance with, the laws of the State of California.
9. **Attorneys' Fees.** In the event any action shall be instituted between the DECLARANT and the CITY in connection with this Declaration, the party prevailing in such action shall be entitled to recover from the other party all of its costs of action, including, without limitation, attorneys' fees and costs as fixed by the court therein.

(INTENTIONALLY BLANK)

DECLARATION OF RESTRICTIVE COVENANTS
(ENCROACHMENT ON CITY EASEMENT)
4002 ELSIE DRIVE

CITY OF YORBA LINDA

DECLARANT

By: _____
Jamie Lai
City Engineer

By: _____
Phuc Tito Nguyen

By: _____
Hang Thanh Bui

Attest:

By: _____
Marcia Brown
City Clerk

Approved as to Form:
Rutan & Tucker LLP

By: _____
Todd Litfin
City Attorney

EXHIBIT "A"

