

RECORDING REQUESTED BY:
CITY OF OCEANSIDE
AFTER RECORDING RETURN TO:
CITY CLERK
CITY OF OCEANSIDE
300 NORTH COAST HIGHWAY
OCEANSIDE, CA 92054

DOC# 2022-0411166



Oct 25, 2022 02:59 PM
OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: \$101.00 (SB2 Atkins: \$75.00)

PAGES: 5

APN: 165-430-30-00

SPACE ABOVE FOR RECORDERS USE ONLY

City Clerk Doc# 22-D0744-4

DOCUMENTARY TRANSFER TAX \$ None

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

**ENCROACHMENT REMOVAL AGREEMENT
PROPOSED ENCROACHMENT ON RIGHT-OF-WAY**

(ERA22-00011)

THIS ENCROACHMENT REMOVAL AGREEMENT ("AGREEMENT") dated solely for identification this 21st, day of October, **2022**, by and between the **CITY OF OCEANSIDE**, a municipal corporation, (hereinafter called "CITY"), and, **ON GENEVA HOLDINGS, LLC**, (hereinafter called "OWNER").

WHEREAS, OWNER is the owner of that certain real property located at **GENEVA STREET AND BASEL STREET** 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, 9667, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 5, 1980.

WHEREAS, OWNER has requested that CITY allow OWNER to build and maintain a **PROPRIETARY CURB OUTLET**, (hereinafter called the ENCROACHMENT) for the use and benefit of said owner's Property, encroaching **5.4** feet in, on, over, across, and through the **EL CAMINO REAL** a **VARIABLE 110 FOOT TO 142 FOOT** wide right-of-way, (hereinafter called the RIGHT-OF-WAY), which said ENCROACHMENT 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 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 therefor on file in the CITY'S Engineering Division, and as briefly described on Exhibit "B".

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(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 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 of the RIGHT-OF-WAY by 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.

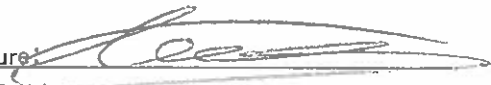
(11) This Agreement and all the obligations contained therein shall constitute covenants running with the land and shall be binding on and for the benefit of OWNER, its transferees, successors and assigns, and any other present or future interest holders or estate holders of any portion or all of the property. 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: On Geneva Holdings, LLC City:

Name: NOAM NEWMAN

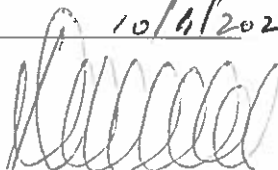
City of Oceanside


Signature: 
Name: MANAGER, MEMBER

By: 
City Engineer Brian Thomas

Dated: 10/1/2022

Dated: 10.21.22

Signature: 
Name: DOMINIC WALSH, MANAGER, MEMBER

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
By: 
City Attorney Barbara Hamilton Dated 10.21.22

Dated: 10/1/22
Please see EA Acknowledgment Certificate.

All-purpose Acknowledgment California

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

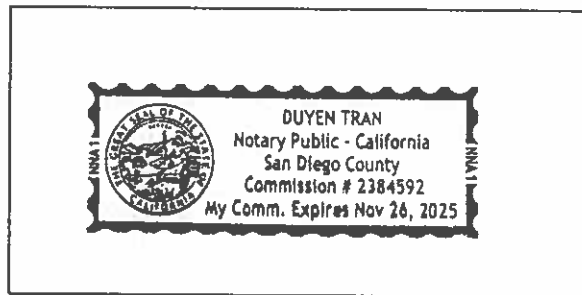
State of California

County of SAN DIEGO

On 10-04-2022 before me, DUYEN TRAN, Notary Public (here insert name and title of the officer),

personally appeared Noam Newman and Dominic Wash

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Notary Seal

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Duyen Tran*

For Bank Purposes Only

Description of Attached Document

Type or Title of Document Encroachment Removal Agreement

Document Date 10-04-2022 Number of Pages Five Pages

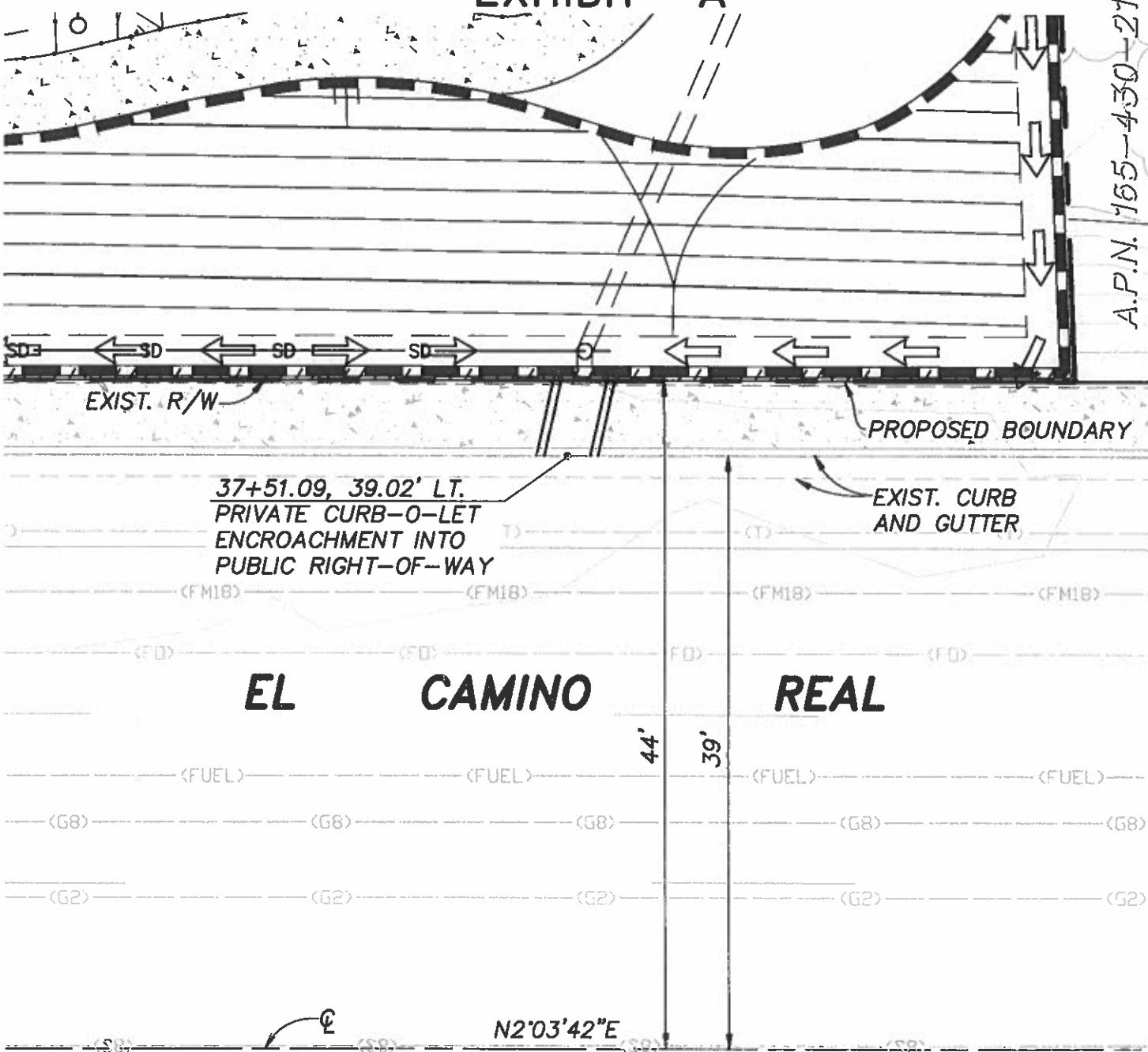
Signer(s) Other Than Named Above None

Account Number (if applicable) None



EXHIBIT "A"

A.P.N. 165-430-21



37+51.09, 39.02' LT.
PRIVATE CURB-O-LET
ENCROACHMENT INTO
PUBLIC RIGHT-OF-WAY

EXIST. CURB
AND GUTTER

EL CAMINO REAL

44'
39'

N2°03'42"E

LEGEND

- CENTERLINE
- RIGHT-OF-WAY LINE
- 12" STORM DRAIN (PRIVATE)
- CURB O-LET (PRIVATE) PER OCEANSIDE IMPROVEMENT PLAN DWG. NO. R21-00030



GRAPHIC SCALE



SB&O INC.
PLANNING ENGINEERING SURVEYING

OWNER: ON GENEVA HOLDINGS, LLC
 SITE ADDRESS: GENEVA STREET AND BASEL STREET, OCEANSIDE, CA.
 ENGINEER: SB&O INC.
 3990 RUFFIN ROAD, ST. 120, SAN DIEGO, CA 92123
 APN# 165-430-30-00 PLAN# R21-00030 ERA 22-00011

CITY OF OCEANSIDE
 ENGINEERING DIVISION
 RIGHT-OF-WAY ENCROACHMENT
 DATE: 9-27-22 SHEET 1 OF 1