

Recording requested by
CITY OF LA HABRA
and when recorded, mail to:
City of La Habra
110 East La Habra Blvd
La Habra, CA 90631

ENCROACHMENT LICENSE AGREEMENT

The City of La Habra, ("CITY") and Jose Ypez, an individual who owns the property located at 770 Durham Street in the City of La Habra ("LICENSEE") and Arturo Diaz ("DIAZ") who owns the property located at 780 Durham Street in the City of La Habra agree as follows:

- (1) RECITALS. This Agreement is made and entered into with respect to the following facts:
 - (a) CITY is the owner of an easement for drainage purposes that contains a 10' by 4" covered drainage culvert located within the City of La Habra, County of Orange, State of California, described on Exhibit "A-1" (hereinafter "Drainage Culvert"). The Drainage Culvert is located on the southern 5' portion of APN 019-061-08 (770 Durham St.) and the northern 5' portion of APN 019-061-09 (780 Durham St.).
 - (b) LICENSEE is the owner of certain real property located within the City of La Habra, County of Orange, State of California, described on Exhibit "A-2" (hereinafter "Licensee Parcel"), and commonly known as 770 Durham St, La Habra, CA 90631
 - (c) LICENSEE desires to obtain a license to permit an encroachment over the drainage culvert for the purposes of extending the sideyard area of the Licensee Parcel to the southern edge of the Drainage Culvert ("Purpose"), as shown on the the attached Exhibit "B" ("Encroachment Area"). DIAZ consents to this encroachment.
 - (d) LICENSEE acknowledges and agrees that as a condition precedent to the CITY granting this License, LICENSEE agrees to be bound by all of the terms and conditions hereof; and
 - (e) The City Council of CITY has heretofore determined, based upon the recommendation of the CITY's staff, that the public interest, convenience and necessity requires the execution of this Encroachment License.

- (2) LICENSE. LICENSEE is hereby granted a License for the above described Purpose only, in and upon the Encroachment Area. CITY shall pay for, own, install and maintain a redwood gate and enclosures to the Encroachment Area. LICENSEE and DIAZ shall not modify the gate and/or enclosures, and LICENSEE shall not place loads over the Drainage Culvert that could compromise its integrity, plant any trees, or construct or install any building or structure in the Encroachment Area unless and until LICENSEE has submitted to the City for approval, plans therefor and has obtained the necessary CITY Approval. No use of any kind shall commence pursuant to this Agreement until the said plans have been approved, in writing, by the City Manager of CITY. The City Manager's approval with regards to the plans shall not be given until the City Manager is satisfied that the location of any improvements, buildings and/or structures do not interfere with the CITY's use of the Encroachment Area. This Agreement shall not be construed to allow encroachment of any building or structure other than that approved by the City Manager pursuant to this paragraph. CITY shall not unreasonably withhold, condition, or delay approval of any submitted plans, and shall coordinate with LICENSEE in good faith regarding any proposed modifications. LICENSEE agrees that CITY shall have a right of entry into the Encroachment Area to repair and maintain the gate, enclosures, and the Drainage Culvert. Such LICENSEE may be revoked and/or modified in the event that the CITY grants a similar license to the property owner of 780 Durham St for that portion over the drainage easement located on that property.
- (3) DUTY TO DISCLOSE TERMS AND CONDITIONS TO SUCCESSORS & ASSIGNS. As a condition to the CITY's granting of this License, LICENSEE and DIAZ agree that they shall disclose to any and all of their successors and assigns the terms and conditions of this Encroachment License and that they shall provide their successors and assigns with a certified copy of this License before transferring or assigning any interest in their respective parcels.
- (4) INDEMNITY. LICENSEE agrees to hold CITY, its elected and appointed officers, agents, and employees, free and harmless from any claim, demand or judgment arising from or out of the performance of this Agreement, and/or the activities and use of the Drainage Culvert under such License by LICENSEE and/or its successors, assigns, invitees, and/or permittees, except to the extent such claims arise from the active negligence, gross negligence or willful misconduct of CITY. In addition, LICENSEE agrees that if any injury or damage is caused to any CITY owned facilities located upon or adjacent to the Drainage Culvert, by LICENSEE, without regard to whether such injury or damage was negligently or intentionally caused, LICENSEE shall reimburse CITY for its costs of repair and/or maintenance related thereto. LICENSEE further

agrees that if the location of any buildings or structures on the Drainage Culvert pursuant hereto cause an increase in cost to CITY with regard to the maintenance, replacement, repair and/or reconstruction of CITY facilities now or hereafter, located on or near the Drainage Culvert, that LICENSEE will pay, to CITY upon 30-days written demand therefor, the amount of additional costs occasioned thereby. LICENSEE shall not be responsible for injury or damage caused by CITY, CITY's contractors, or unrelated third parties not under LICENSEE's control.

- (5) INSURANCE. At all times during the term of this Agreement and continuously after the termination of this Agreement as set forth in paragraph (10) hereof, LICENSEE shall procure and maintain in full force and effect liability insurance coverage relating to its activities pursuant to the terms and conditions of this Agreement. Such liability insurance coverage shall be obtained from companies and in amounts, as may be approved by the CITY. Each such required policy shall name the CITY and its appointed and elected officers, agents and employees as additional insureds. Each policy shall contain a clause in substantially similar form to the following:

"It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduced until thirty (30) days after receipt by CITY of written notice of such cancellation or reduction of coverage as evidenced by a receipt of a registered or certified letter."

LICENSEE shall file with the City Clerk-Treasurer contemporaneously with the execution of this Agreement a certificate of insurance evidencing the existence of insurance required hereunder. LICENSEE shall maintain on file with the City Clerk current and valid certificates of insurance at all times during the term of this Agreement and continuously after the termination of this Agreement pursuant to paragraph (10) hereof.

The provisions of this paragraph shall not be deemed to affect, in any way whatsoever, the obligations of the LICENSEE relating to indemnification set forth in this Agreement.

LICENSEE's obligation to maintain insurance shall terminate upon LICENSEE's full removal of all improvements and restoration of the Property to CITY's reasonable satisfaction, as confirmed in writing by CITY.

- (6) EXISTING FACILITIES. CITY hereby agrees to furnish to LICENSEE all available information it has concerning the location, within the Encroachment Area, of facilities owned by CITY. LICENSEE understands

and agrees that the dissemination of such information by CITY is not to be construed, for any purpose, as a guarantee of the precise location of such facilities, their nature and/or ownership.

- (7) BINDING EFFECT. The provisions of this Agreement are intended to and will run with the land, and, until their expiration or termination in accordance with the terms of this Agreement, will bind, be a charge upon and inure to the benefit of CITY and LICENSEE, their respective successors and assigns. However, LICENSEE shall remain bound by the insurance requirement(s) set forth in paragraph (5) hereto unless and until the encroachments are removed or LICENSEE causes its successor(s) in interest and/or assigns to procure the requisite insurance and to provide the CITY with a certificate of insurance evidencing the existence and satisfaction thereof according to paragraph (5) hereof.

In the event LICENSEE and/or its successors in interest and/or assigns fail to procure and to maintain the requisite insurance and/or provide the CITY with proof of insurance, LICENSEE hereby authorizes the CITY, on behalf of LICENSEE and its successors and assigns, to procure and to maintain insurance at LICENSEE'S sole cost and expense, whereas such cost and expense shall include, without limitation, reasonable attorney fees in seeking reimbursement for any and all costs in procuring such insurance. CITY shall first provide LICENSEE with written notice and a 60-day period to cure before procuring insurance on LICENSEE's behalf.

- (8) RECORDING. This License Agreement and any amendments and/or modifications shall be recorded in the office of the County Recorder of the County of Orange against the properties located at both 770 and 780 Durham Street, La Habra, CA 90631.
- (9) TERM. The term of this Agreement shall be for a continuous period of fifty (50) years, commencing on the effective date hereof, unless terminated earlier as provided for herein. Thereafter, this Agreement shall automatically be extended for successive terms of one (1) year each unless terminated by either party in accordance with paragraph (10) hereof.
- (10) TERMINATION.

(a) Termination by CITY. CITY may terminate this Agreement upon sixty (60) days written notice upon determination by CITY that LICENSEE has breached this Agreement, whereas LICENSEE'S failure to comply with the insurance requirements set forth in this Agreement shall be deemed a material breach of this Agreement. CITY shall provide

LICENSEE with written notice of breach and a 60-day period to cure before termination may take effect. CITY may also terminate this Agreement upon one year's written notice that the CITY has determined that removing the encroachment is in the public interest, health, safety or welfare.

(b) Effective Date of Termination. Termination shall be effective upon the 366th day in the case of termination by LICENSEE, and the 61st day, as applicable, in the case of termination by CITY for breach and the 366th day in the case of termination for the public interest, following termination notice being given to the party to be notified. Such termination notice shall be in writing and served in the manner prescribed in this Agreement.

(c) LICENSEE'S Obligation to Remove Encroachment. Upon termination by either party to this Agreement or upon expiration of the term hereof, CITY shall remove gate and enclosures. It shall be the sole obligation and responsibility of the LICENSEE to remove from the Drainage Culvert, at its sole cost and expense, all buildings, structures, improvements and appurtenances thereto constructed, erected and/or installed on, under, or across the Drainage Culvert by LICENSEE pursuant to this Agreement, excepting therefrom any improvements to be dedicated to the City at no cost and accepted by the City Manager in writing at City's sole discretion. LICENSEE shall restore the Property to a condition reasonably similar to its original state at the time of execution, taking into account normal wear and improvements approved by CITY at the time of execution of this Agreement. If the LICENSEE fails to remove such buildings, improvements, structures, and/or appurtenances and to restore the Property to its prior condition, CITY may undertake to do so at the sole cost and expense of LICENSEE and LICENSEE shall promptly remit to CITY all sums incurred by CITY in performing such work.

(11) NOTICES. Notices pursuant to this Agreement shall be given by personal service upon the party to be notified or by deposit of the same in the custody of the United States Postal Service, or its lawful successor, postage prepaid, addressed to the parties hereto as follows:

(1) CITY:
City of La Habra
110 E La Habra Blvd
La Habra, California 90631

(2) LICENSEE:
Jose Yepez, The Yepez Family TR
770 Durham St.

La Habra, CA 90631
(3) Arturo Diaz
780 Durham St.
La Habra, CA 90631

Notices given pursuant to this Agreement shall be deemed given as of the date of personal service or two (2) consecutive calendar days following deposit of notice in the custody of the United States Postal Service.

- (12) WAIVER. No waiver by any party at any time of any breach of any provision of this Agreement shall be deemed a waiver or a breach of any other provision herein or a consent to any subsequent breach of the same or another provision. If any action by any party shall require the consent or approval of another party, such consent or approval of such action on any one occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action.
- (13) CAPTIONS AND HEADINGS. The captions and paragraph numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope or intent of this Agreement.
- (14) COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same instrument.
- (15) GOVERNING LAW. This Agreement has been prepared, negotiated and executed in, and shall be construed in accordance with, the laws of the State of California. Any action or proceeding relating to or arising out of this Agreement shall be filed, if a State action, in the Superior Court of the State of California for the County of Orange.
- (16) ATTORNEYS FEES. If either party named herein brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action (or proceeding), on trial or appeal, shall be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the Court (or if applicable, the arbitrator).
- (17) TIME OF ESSENCE. Time is of the essence with respect to all matters contained in this Agreement.
- (18) EFFECTIVE DATE. All references in this Agreement to "the date of this Agreement" or "the date hereof" shall be deemed to refer to the latest date of execution of this Agreement by either party.

- (19) INVALIDITY OF ANY PROVISION. If any provision (or any portion of any provision) of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity, and enforceability of the remaining provisions (or the balance of such provision) shall not be affected thereby.
- (20) DRAFTING OF AGREEMENT. LICENSEE and CITY acknowledge that this Agreement has been negotiated at arm's length, that each party has been represented by independent counsel and that this Agreement has been drafted by both parties and no one party shall be construed as the draftsman.
- (21) NO THIRD PARTY BENEFICIARY RIGHTS. This Agreement is entered into for the sole benefit of LICENSEE and CITY and DIAZ and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.
- (22) JOINT AND SEVERAL LIABILITY. The LICENSEE and its successors and assigns shall be jointly and severally liable under the terms and conditions of this Agreement. Notwithstanding anything herein to the contrary, LICENSEE shall be released of any further obligations or liability arising under this Agreement following a conveyance of fee title to the Licensee Parcel to a successor owner together with an assignment of this Agreement, provided such successor owner assumes the obligations of the licensee under this Agreement, and provides the CITY with a certificate of insurance evincing the existence and satisfaction of the insurance required according to paragraph (5) hereof.
- (23) INCORPORATION OF EXHIBITS. Each and all of the exhibits attached to this Agreement are incorporated herein by reference as if set forth in full in this Agreement.
- (24) NO JOINT VENTURE, PARTNERSHIP OR OTHER RELATIONSHIP CREATED. There is no relationship between LICENSEE and CITY which shall be construed in any way whatsoever as a joint venture, partnership or any other similar relationship created or implied by this Agreement.

[signature page to follow]

CITY OF LA HABRA,

By: _____

Date: _____

Mayor, _____

ATTEST:

City Clerk

Date: _____

APPROVED AS TO FORM:

City Attorney, Keith F. Collins

Date: _____

LICENSEE:

By: _____
Date: 4-9-26
Jose Ypez



DIAZ:

By: _____
Date: 4-9-26



ARTURO DIAZ

ACKNOWLEDGEMENT AND CONSENT OF MR. ARTURO DIAZ, 780 DURHAM STREET PROPERTY OWNER

I, for myself and my successors in interest, have read the above license agreement and consent and agree that the 770 Durham Street Property Owner Jose Ypez and his successors in interest may utilize all of the drainage easement area as described in this Agreement. I acknowledge that if at any time, I desire to use the portion over the drainage easement located on 780 Durham Street, that I may do so by entering into a similar license agreement with the City and installing a fence along the property line at my sole expense.

By: 
ARTURO DIAZ

Date: 4-9-26

Exhibit "A-1"

(Legal Description of the Property)

A strip of land, 10.00 feet in width, for drainage purposes, over, under and across a portion of Lots 26 and 27 of tract 4239, said strip of land lying 5.00 feet on each side of the shared boundary line between said Lot 26 and 27 of said tract.

Exhibit "A-2"

(Legal Description of the Licensee Parcel)

Lot 26 of Tract No. 3249, as per map recorded in Book MM 102, Pages 4 and 5 of Maps, in the office of the County Recorder of Orange County, California.

APN: 019-061-08

Exhibit “B”

(Depiction of Encroachment Area)

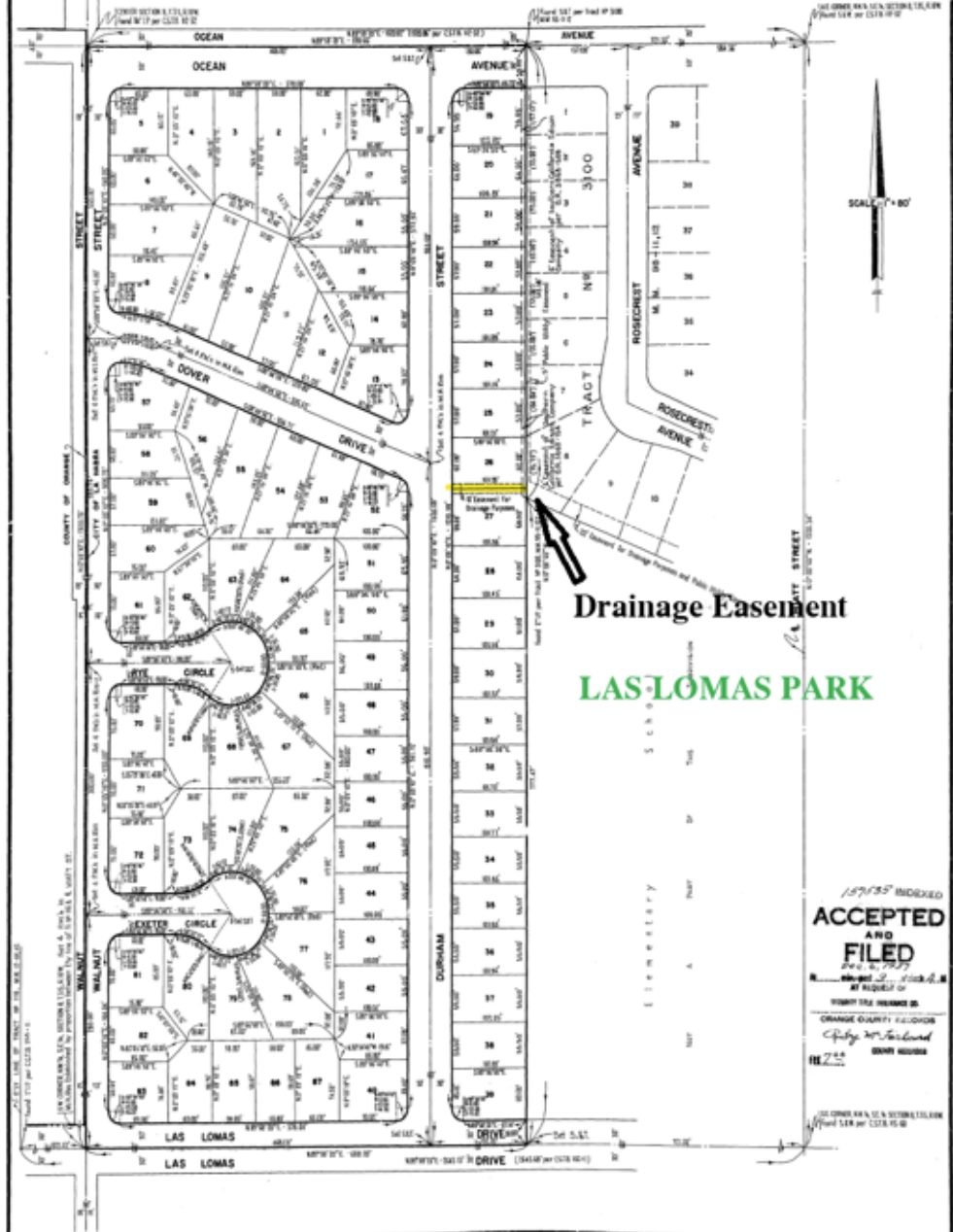
ORIGINAL TRACT N° 3249 IN THE CITY OF LA HABRA COUNTY OF ORANGE-STATE OF CALIFORNIA

EXHIBIT 'B'

DECEMBER, 1957
18.173 ACRES
87 LOTS
A. RICHARD BROWN, JR.
R.G.E. 9983

BOOK OF RECORDS-The bearing of the subdivision of BESSIE BEHNE (1872-1972)
as shown on a map of Tract # 3249, N.M. 15-112, was used as the basis of
bearings for this map.

NOTES:
1. All 7' x 7' lots shown as 7' x 7' on 1" below ground surface, filled with concrete and
a metal lug stamped "L.S. 882".
2. 7' x 7' lots filled with concrete and bearing metal lugs stamped "L.S. 882" to be set at
all rear lot corners, unless otherwise noted.
3. Lanes, Walks & Drives stamped "L.S. 882" to be set in sidewalk as well as in pavement and shall
be the full width thereof, lot corners.



19735 INDEXED
**ACCEPTED
AND
FILED**
R. ...
AT REQUEST OF
ORANGE COUNTY RECORDS
DEAN HODGINS