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City Clerk
City of Chula Vista
P.O. Box 1087
Chula Vista, CA 91912

This document benefits Permittee.
Recording fee required.

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C.V. File No. 0710-40-PE1006
Affects Assessor's Parcel No(s) 643-060-57-00

ENCROACHMENT MAINTENANCE AGREEMENT & PERMIT (PE1006)

LMC Millenia Investment Company, L.P., a California Limited Partnership (hereinafter "Permittee") whose mailing address is 505 Lomas Santa Fe, Suite 200, Solana Beach, CA 92075, hereby requests a building encroachment within a portion of the City right-of-way adjacent to and for the direct benefit of the following described property:

LEGAL DESCRIPTION: Lot 7 of Final Map 16081, recorded December 28, 2015 in the official records of the County of San Diego, State of California.

NOW THEREFORE, in consideration of the mutual promises, and other good and valuable consideration contained herein, the parties hereto agree as follows:

Pursuant to Chapter 12.28 of the Chula Vista Municipal Code PERMISSION IS HEREBY GRANTED to install and maintain a second story deck, 72'6" long and 29' above ground; said deck overhanging four feet into the City right-of-way along Montage Avenue on the side of the Building located on the west side of Montage Avenue north of Optima Street (hereinafter "Encroachment") in accordance with the following terms and conditions:

1. Encroachment shall, in no way interfere with any City equipment, City facility, or existing utility, including the maintenance or operation of existing water meters, CATV or telephone pedestals, public storm drains, sewer lines, traffic signal or street light conduit or electrical lines, irrigation water lines or irrigation electrical lines owned and maintained by the City. Any costs arising from changes of or to any City equipment or facility due to the encroachment of the Permittee's private facilities shall be the sole responsibility of Permittee and subject to placement of a lien on the property if incurred by the City.
2. Any costs arising from damage to Encroachment due to access to or maintenance of public facilities shall be the sole responsibility of Permittee and subject to placement of a lien on the property if any cost is incurred by the City.
3. Maintenance, removal or relocation of Encroachment shall be the sole responsibility of Permittee, and/or Permittee's lessee, should there be any, at no expense to City. Permittee shall obtain any required permits from City prior to doing any such work in the City's right of way, or on City property, except that maintenance that does not affect existing improvements or City facilities, that does not require traffic control, and that would not require City inspection may be done under this encroachment permit.
4. Permittee shall call Underground Service Alert (One call mark-out service) at 1-800-422-4133 (or 811) a minimum of two working days prior to **any** excavation being done in the City's right of way, or on City property, including postholes or footing excavations. Mark-out of existing underground facilities shall be made prior to making any excavations.

5. Permittee shall install and maintain Encroachment in a safe and sanitary manner at the sole cost of Permittee as determined by City.
6. Permittee shall not allow Encroachment to alter the existing course of drainage to the extent that it may endanger the public or the surrounding properties or cause ponding of water.
7. Permittee assumes all responsibility for any drainage, debris or material within the City's right of way, or on City property, caused as a result of the Encroachment.
8. Permittee shall immediately remove any graffiti from the Encroachment or the building on which the Encroachment is affixed to.
9. City shall have the right, but not the obligation, to remove graffiti or paint the Encroachment or the building on which the Encroachment is affixed to, the paint being provided and the cost of labor paid by Permittee.
10. Permittee shall call the Engineering Construction Inspection Section at (619) 397-6128 at least 24 hours (one working day) prior to doing any work at the site in the City right of way, or on City property, that would require City inspection. City inspection services will be closed during designated City holidays. Inspection services will not be provided on those days.
11. Encroachment shall be installed in accordance with Design Review Activity Number DR16-0009 and City Building Permit(s) issued for the structure.
12. Encroachment shall conform to the standards of the City of Chula Vista, including the following:
 - a. Restoration of existing improvements and/or landscaping damaged or affected by the Encroachment to the satisfaction of the City Manager or designee;
 - b. Limits of pavement removal and replacement shall be as required by the City Engineer or designee;
 - c. Decorative pavement, colored pavement, and pavement treatments (if any) shall be matched and replaced to the satisfaction of the Development Services Director or designee;
 - d. Permittee shall hire a licensed land surveyor to replace any monumentation obliterated by the construction of the Encroachment;
 - e. Replacement of any survey monument shall also require the recording of survey documents with the County of San Diego; recorded copy to be provided to the City Survey Section;
 - f. Replace or relocate any landscape irrigation structures affected by the Encroachment;
 - g. Entire sidewalk panels shall be removed and replaced if the sidewalk is affected by the Encroachment. The cutting and patching of partial sidewalk panels shall not be allowed.
13. Encroachment shall conform to all standards and specifications as stated in the Chula Vista Municipal Code.
14. Permittee shall notify the office of the City Engineer if the Encroachment is to be removed to ensure the work is completed according to standard practices acceptable to the City Engineer or designee. Permittee shall obtain any required permits from the City prior to beginning such work.
15. All terms and conditions of this permit as to the Permittee shall be a burden upon Permittee's land and shall run with the land. All conditions apply to Permittee and all his/her/their heirs, assigns, successors or transferees.

Permittee should be aware that this permit may create a possessory interest in the property, in favor of the Permittee. If such a possessory interest is created, it may be subject to property taxation for which the Permittee will be responsible.

Permittee shall defend, indemnify, protect, hold harmless and release the City, its elected and appointed officers and employees, from and against all past, present or future claims for damages, liability, cost and expense (including without limitation attorneys' fees) arising out of or in any way related to the Encroachment or the conduct of the Permittee, or any agent or employee, subcontractors, or others (including third parties) in connection with the execution of the work covered by this agreement except only for those claims arising from the sole negligence or sole willful conduct of the City, its officers, or employees. Permittee's indemnification shall include any and all

costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Permittee at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees. Permittee's indemnification of City shall not be limited by any prior or subsequent declaration by the Permittee.

Permittee hereby agrees to and shall release, hold harmless and defend City, its elective and appointive boards, officers, agents and employees against any claim, and in any suit or proceeding, at law or in equity, for damages caused, or alleged to have been caused, by actions taken or alleged to have been taken, or in any way related to or arising from actions taken, under this permit by Permittee directly or by his/her/their agent(s), contractor(s), or agents or employees of same. Permittee further agrees to and shall indemnify and hold harmless City, its elective and appointive boards, officers, agents and employees, as indemnities, for any claim, suit or proceeding submitted, brought or instituted against City as a result of actions taken, or alleged to have been taken, or in any way related to or arising from actions taken, under this permit, including, but not limited to, any asserted liability for loss of or damage to property or for personal injury, including death.

The undersigned Permittee hereby accepts the foregoing encroachment permit upon the terms and conditions stated herein and agrees to comply with all stated terms and conditions and with all applicable laws, including any applicable provision of the Chula Vista Municipal Code. It is further agreed that if any part of Permittee's Encroachment or Permittee's rights under this encroachment permit should interfere with the future use of the City's right of way/easement/property by the general public, it must be removed or relocated at Permittee's expense and such right shall be terminated as and when indicated by City.

In the event of a dispute arising as to the terms or interpretation of this permit, the City Engineer shall resolve said dispute in his sole and unfettered discretion, reasonably applied.

(End of page. Next page is signature page.)

SIGNATURE PAGE FOR PE1006

CITY OF CHULA VISTA:

Permit approved by:

Gary Halbert
City Manager

Date _____

(City Clerk to attach acknowledgment.)

PERMITTEE:

LMC Millenia Investment Company, L.P.,
a California Limited Partnership

By: _____
Authorized Signatory
Name:
Title:

Date: _____

By: _____
Authorized Signatory
Name:
Title:

Date: _____

*(Notary to attach acknowledgment for each signature.)
(Corporate Authority required for each Signatory, if applicable.)*