



# Council Agenda Report

From: Darren Nash, Associate Planner

Subject: Encroachment Agreement – California Athletic Club Management Inc. - Permit Installation of parking lot light poles, parking lot landscaping and associated irrigation equipment within the City’s public trail easement located along the eastern property boundary.

Date: March 6, 2018

## Facts

1. California Athletic Club Management Inc. is the owner of the Paso Robles Athletic Club located at 2975 Union Road, across Union Road from Barney Schwartz Park.
2. As part of the construction of the new Phase II building, when constructing the parking lot, the light poles and associated landscaping were installed within the 10-foot public trail easement established along the eastern property boundary (see Figure 1).

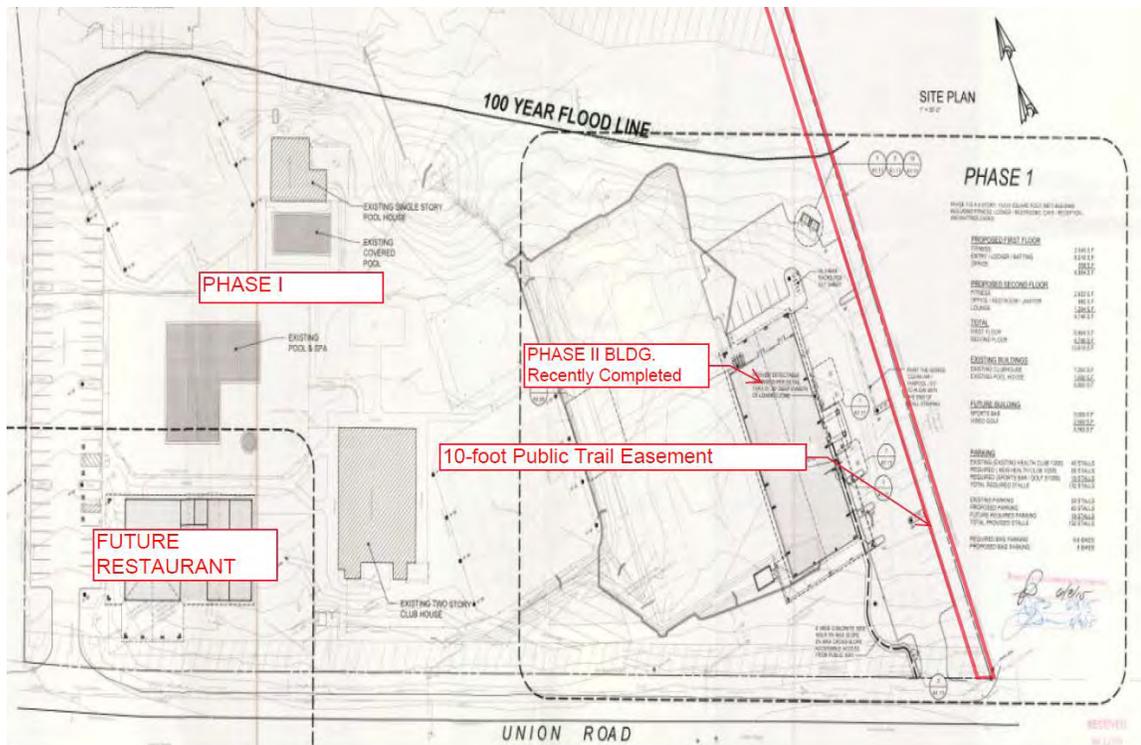


Figure – 1, Site Plan showing easement location

3. California Athletic Club Management Inc. is requesting that the City allow the installation of five (5) parking lot light poles, parking lot landscaping, and associated irrigation equipment within the City’s public trail easement.

4. The City plans to use the 10-foot easement on the athletic club property along with the additional 10-foot on the adjacent (Butterfield) property, to develop a pedestrian and bike trail to create connectivity with other trails and parks to serve the City's and the public's convenience, safety, and interest (see Figure 2).



*Figure 2, Photo of improvements in easement*

5. The City has prepared a Durable Encroachment Agreement that spells out terms and conditions for the encroachment for the parking lot lighting and irrigation, including insurance coverage, indemnification, removal, and maintenance. (see Exhibit A to Draft Resolution A, Attachment 1)
6. California Athletic Club Management Inc. is in agreement with the Encroachment Agreement terms and has provided a signed copy to the City.

### **Options**

1. Take no action.
2. Adopt, Resolution 18-xxx, Attachment 1, authorizing the City Manager to enter into a Durable Encroachment Agreement with California Athletic Club Management Inc., to allow for the encroachment of the five (5) parking lot light poles, parking lot landscaping, and associated irrigation equipment within the City's public trail easement.
3. Refer this item back to staff for additional information and refinement.

**Analysis and Conclusion**

California Athletic Club Management Inc. has agreed to and signed the Durable Encroachment Agreement (Exhibit A to Attachment 1), which stipulates the terms of the public easement encroachment. The terms include requirements for repair, removal, insurance and indemnification. Lastly, this agreement does not give the Landowners any permanent rights, as the City can request the improvements to be removed upon 60 days' notice.

**Fiscal Impact**

None. This encroachment agreement will not have a fiscal impact on the City as the Applicants will reimburse the City for all permitting costs.

**Recommendation**

Approve Resolution 18-xxx, Attachment 1, authorizing the City Manager to enter into a Durable Encroachment Agreement with California Athletic Club Management Inc., to allow for the encroachment of the five (5) parking lot light poles, parking lot landscaping, and associated irrigation equipment within the City's public trail easement.

**Attachments**

1. Draft Resolution 18-xxx
  - a. Exhibit A - Durable Encroachment Permit Agreement between the City of El Paso de Robles and California Athletic Club Management Inc.

# Attachment 1

## Draft Resolution 18-xxx

### DRAFT RESOLUTION 18-xxx

#### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES APPROVING A DURABLE ENCROACHMENT AGREEMENT BETWEEN THE CITY OF EL PASO DE ROBLES AND CALIFORNIA ATHLETIC CLUB MANAGEMENT, INC.

WHEREAS, California Athletic Club Management, Inc. (California Athletic Club) owns and operates the Paso Robles Athletic Club located at 2975 Union Road; and

WHEREAS, California Athletic Club has requested permission to allow for the encroachment of five (5) parking lot light poles, parking lot landscaping, and associated irrigation equipment within the City's public trail easement; and

WHEREAS, the proposed encroachment of the public right of way will not interfere with existing City and public Utilities or right-of-way use; and

WHEREAS, a public hearing was conducted by the City Council on March 6, 2018, to consider facts as presented in the staff report prepared for this project, and to accept public testimony regarding this proposed right of way encroachment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. All of the above recitals are true and correct and incorporated herein by reference.

Section 2 - Findings: based upon the facts and analysis presented in the staff report, public testimony received and subject to the conditions listed below, the City Council makes the following findings:

1. The proposed encroachment is consistent with the adopted codes, policies, standards and plans of the City; and
2. The proposed encroachment will not be detrimental to the health, safety, morals, comfort, convenience and general welfare of the residents and or businesses in the surrounding area, or be injurious or detrimental to property and improvements in the neighborhood or to the general welfare of the City; and
3. The proposed encroachment accommodates the aesthetic quality of the City as a whole since the light poles and landscaping are installed in a manner that accommodates the athletic club, and could be incorporated into future trail improvements.

Section 3 – Approval: the City Council of the City of El Paso de Robles does hereby approve the Durable Encroachment Agreement for Installation and Maintenance of parking lot light poles and landscape improvements, attached hereto as Exhibit A and incorporated herein by reference, and authorizes the City Manager to execute said agreement.

# Attachment 1

## Draft Resolution 18-xxx

PASSED AND APPROVED by the City Council of the City of El Paso de Robles this 6<sup>th</sup> day of March 2018 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

Steven W. Martin, Mayor

ATTEST:

---

Kristen L. Buxkemper, Deputy City Clerk

Exhibits

- A. Durable Encroachment Agreement Between the City of El Paso de Robles and California Athletic Club Management Inc.

**Attachment 1**  
**Draft Resolution 18-xxx**

Exhibit A – Durable Encroachment  
Agreement Between the City of El Paso de  
Robles and Firestone Walker Inc.

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City of El Paso de Robles  
1000 Spring Street  
Paso Robles, CA 93446  
Attn: City Engineer

Exempt from Recording Fee per  
Government Code § 6103

(Space above for Recorder's Use)

**REVOCABLE ENCROACHMENT AGREEMENT**

This Encroachment Agreement ("Agreement") is issued by the CITY OF EL PASO DE ROBLES, a California municipal corporation and general law city ("City"), to California Athletic Club Management Inc. ("Property Owner"). Hereinafter, City and Property Owner are sometimes referred to individually as the "Party" and collectively as the "Parties."

**RECITALS**

A. Property Owner owns a fee simple interest in the commercial property located at 2975 Union Road, Paso Robles, California ("Property"), APN 025-371-025. The property is legally described in **Exhibit "A."**

B. Property Owner seeks an encroachment permit for five (5) parking lot light poles, parking lot landscaping, and associated irrigation equipment ("Improvements"), which encroach over the City's public trail easement ("Public Right-of-Way"), located along the Property's easterly boundary.

C. Property Owner's approved architectural and civil engineering plans showed the Improvements on the Property Owner's private property and not on the City's Public Right of Way but were nonetheless built in the City's Public Right of Way.

D. The City plans to develop the Public Right of Way as a pedestrian and bike trail to create connectivity with other trails and parks to serve the City's and the public's convenience, safety, and interest.

E. City is willing to authorize Property Owner to encroach temporarily upon its Public Right-of-Way subject to the Property Owner's acknowledgment and understanding that the City may revoke this Permit at any point and for any reason or no reason at City's sole discretion and that Property Owner continues the encroachment at Property Owner's sole risk, and further subject to the terms and conditions contained herein.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

### AGREEMENTS

1. **Recitals Incorporated.** The foregoing recitals are incorporated by reference as though fully set forth herein.
2. **Grant of Encroachment.** City hereby grants to Property Owner a revocable and non-exclusive right of encroachment upon the Public Right-of-Way for the purpose of using and maintaining the Improvement, and subject to Property Owner's fulfillment and ongoing compliance with the limitations, terms, and conditions set forth herein.
3. **City Access.** Property Owner's use and maintenance of the Improvements shall be subordinate to any use, maintenance, reconstruction, replacement, or operation of the Public Right-of-Way that City may conduct during the effective period of this Agreement. Property Owner shall neither cause unreasonable delay or interference with City's access to the Public Right-of-Way nor interfere with City's operations in the Public Right-of-Way, whether or not such interference is considered material.
4. **Permitted Encroachment of Improvements.** The Improvements is permitted to encroach into City's Public Right-of-Way subject to the Property Owner's representation that Property Owner has obtained all necessary building permits and/or construction activity permits that may be required by the most recent edition of the Uniform Building Standards Code, as adopted and amended by City. This encroachment permit is not a building permit and does not grant permission to use and maintain the Improvements described herein without a separate building permit, if City so requires. Property Owner's authorization to maintain and use the Improvements is subject to the following limitations:
  - a. The final design drawings, approved by the City and reflecting the "as-built" conditions, shall be attached hereto as **Exhibit "B,"** and incorporated herein by reference, and considered a material part of this Agreement. Property Owner shall use and maintain the Improvements in strict compliance with the approved final "as-built" drawings, and no changes, modifications, alternations, deviations, expansions or re-design and reconstruction shall be permitted without first obtaining City's prior written consent, which City may grant or deny in its sole discretion.
  - b. The City is granted immediate access to the Public Right-of-Way for any and all purposes, including but not limited to inspection, cleaning, maintenance, repair work, and/or installing additional improvements and appurtenances. Property Owner shall make design and construction changes necessary, subject to City approval, to facilitate such City access at Property Owner's sole cost.
  - c. City reserves the right to reject without liability, and/or require any changes to, the "as-built" drawings for the Improvements if City determines, in its sole and absolute discretion, that such action is necessary to preserve City's ability to adequately

inspect, clean, maintain, repair, or replace existing improvements located within the Public Right-of-Way.

- d. Property Owner will provide City with a schedule of maintenance activities relating to the Improvements prior to the commencement of maintenance work within or over the Public Right-of-Way. Such work may not begin within or over the Public Right-of-Way until City approves the construction schedule.
- e. Property Owner shall be required to obtain any other necessary and required licenses, permits, and authorizations from any governmental agency with jurisdiction over the Improvements and to pay all fees and charges associated therewith with the Improvements.
- f. Property Owner is responsible for maintaining the Improvements described herein. Property Owner shall maintain the Improvements in a safe and attractive condition as an encroachment within City's Public Right-of-Way. The Improvements shall be subject to City inspection. However, City has no obligation to inspect the Improvements and maintaining them in a safe condition is solely an obligation of the Property Owner.
- g. Should City decide in its sole discretion to revoke this Permit, Property Owner shall remove the Improvements and return the Public Right-of-Way to its original condition at Property Owner's sole cost.

**5. Risk of Damage.** Property Owner, in perpetuity, expressly waives, releases, and relinquishes any and all claims, causes of action, rights, and remedies Property Owner may now or hereafter have against City, its officials, officers, employees, and agents, whether known or unknown, with respect to liability for any damage to or loss within the Public Right-of-Way pursuant to this Agreement, unless such damage or loss is caused by the City's gross negligence or willful misconduct. As a material part of City's decision to issue this Agreement, Property Owner assumes all risk of damage to the Improvements within the Public Right-of-Way arising from any cause attributable to City's exercising its rights hereunder or within the Public Right-of-Way. Property Owner shall be solely responsible for restoring, at its sole cost and expense, its Improvements in the Public Right-of-Way after City has exercised any of its rights described in this Agreement. Property Owner hereby waives all claims in respect thereto against City, unless caused by the gross negligence or willful misconduct of City.

PROPERTY OWNER HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("SECTION 1542"), WHICH IS SET FORTH BELOW:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BY INITIALING BELOW, PROPERTY OWNER HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

  
\_\_\_\_\_

Property Owners' Initials

The waivers and releases by Property Owner contained herein shall survive the term of this Agreement and shall be binding upon the assignees, transferees, and successors in interest of Property Owner.

**6. Indemnity.** Property Owner shall assume the defense of, indemnify and hold harmless City from and against all actions, causes of action, demands, liabilities, costs, damages, claims, losses and expenses (including attorneys' fees) (collectively, "Costs") of every type and description to which they may be subjected or put, by reason of, or resulting from (a) any act or omission of Property Owner or its representatives in connection with any matters contemplated by this Agreement; (b) any property damage or damage to personal property caused by City arising out of or in connection with City's exercise of its rights as stated in this Agreement; (c) any death, bodily injury, property damage, or casualty caused in whole or part by Property Owner or its representatives; (d) any breach by Property Owner of its obligations under this Agreement; and (e) the design, engineering, construction, installation and location of the Improvement. The only exception to the foregoing shall be for Costs caused by the gross negligence or willful misconduct of the City. Subject only to the immediately preceding sentence, Property Owner, as a material part of the consideration of this Agreement, waives all claims or demands against City for any such Costs. No provision of this Agreement shall in any way limit Property Owner's responsibility for paying damages that result from its actions within the Public Right-of-Way. With respect to matters subject to the indemnity obligations set forth in this Section, City shall have the right, at Property Owner's expense, to commence, appear in, or defend any action or proceeding, arising out of and in connection with the Agreement, and, in connection therewith, may pay all necessary expenses if Property Owner fails upon reasonable notice to so commence, appear in, or defend any action or proceeding with counsel reasonably acceptable to City. Property Owner shall be furnished with copies of bills relating to the foregoing upon request.

**7. Insurance.** Property Owner acknowledges that he or she maintains homeowners insurance and property damage insurance covering the Property, including the encroachment area, in the amount of at least \$1,000,000 per occurrence for damage to property and \$2,000,000 for injury to or death of any person, or a single limit of \$2,000,000, as a result of the placement or condition of the Improvements. The policy shall name the City of El Paso de Robles as an additional insured, and Property Owner does itself and shall require its insurer to waive subrogation in favor of City. Property Owner does hereby waive any right of recovery it may have against City because of payments made by Property Owner or its insurer for damage to property or injury to or death of any person arising out of any act or omission of City. Property Owner shall require its contractors performing work to construct the Improvements to add City as an additional insured on contractor's commercial general

liability policy using ISO form CG 20 38 or exact equivalent. Property Owner shall furnish City with satisfactory evidence of the insurance and evidence that the carrier is required to give City at least 10 days' notice in advance of a cancellation or reduction in coverage of the policies required herein. Property Owner may satisfy limits required under this Section through the use of excess or umbrella liability policies. If excess or umbrella liability insurance is used to supplement Property Owner's homeowners insurance and/or property damage insurance limits, the excess or umbrella liability policy shall be follow-form and shall schedule the underlying policies to which they apply.

**8. Waiver of Subrogation.** Property Owner releases City, its officials, officers, employees, and agents from any claims for damage or harm to any person, the Property, the Public Right-of-Way, or the Improvements, caused by, or which result from, risks insured under any insurance policy carried by Property Owner at the time of such damage or harm. Property Owner shall cause each insurance policy required herein to provide a waiver of subrogation in favor of City, its officials, officers, employees, and agents.

**9. Warranty.** Property Owner warrants that as of the date of this Agreement, Property Owner is the lawful owner in fee simple of the Property described herein.

**10. Covenant Running With the Land.** The terms and provisions set forth herein constitute covenants running with the Property in accordance with Section 1468 of the California Civil Code and shall be binding upon successors, legal representatives, and assigns of the Parties. As such, all successive owners of the Property will have all of the rights, responsibilities, and liabilities of Property Owner as if such person or entity originally executed this Agreement. Every person or entity who now or hereafter owns or acquires any right, title, or interest in any portion of the Property shall be conclusively deemed to have notice of this Agreement, whether or not reference to this Agreement is contained in the instrument by which such person or entity acquires an interest in the Property. Therefore, each and every contract, deed or other instrument hereinafter executed, covering or conveying the Property shall conclusively be deemed to have been executed, delivered, and accepted subject to this Agreement.

**11. City May Maintain or Remove.** In addition to the City's right to revoke this encroachment permit for any or no reason, the City may maintain or remove the Improvements are provided herein. If Property Owner fails to meet the standard necessary to maintain the Improvements, City may give written notice of the deficiency to Property Owner who shall have 20 days to make necessary corrections, unless the deficiency is deemed by the City to impair public health and safety, in which case the correction shall be made immediately. If the correction is not made within the time allowed, as determined by City in its sole discretion, City may elect to take the steps necessary to maintain or remove the Improvements and any other encroachment entirely. To do this, the City shall serve a notice of its intent for this purpose. The City shall either personally serve the notice upon Property Owner or mail a copy of it by certified mail to Property Owner's last known address, or address as shown on the tax rolls, at least 15 days in advance of the date on which it intends to take steps to maintain or remove the Improvements. If Property Owner fails to remove the Improvement as set forth in the written notice of revocation, City shall have the right to remove the Improvements without reimbursement to Property Owner. In the case of an emergency, as determined by the City in its

sole and absolute discretion, City may remove the Improvements without prior written notice to the Property Owner. The City may, in its sole discretion, act either through its own employees or through an independent contractor. If Property Owner fails to remove the Improvements as set forth in the written notice of revocation, and in the event of removal due to an emergency, Property Owner shall pay the cost of removal by City plus an administrative fee in the amount of fifteen percent (15%) of such costs to City within fifteen (15) calendar days of Property Owner's receipt of an invoice from City. The parties hereto agree that such charge represents a fair and reasonable estimate of the costs City will incur to oversee removal of the Improvement.

- h. *City's Costs of Maintenance or Removal a Lien.* If City incurs costs in maintaining or removing the Improvements or any other encroachment, including, without limitation, attorneys' fees or administrative costs, after following the procedure set forth in the first paragraph of this Section 10, the City shall demand in writing that Property Owner pay all such costs. If Property Owner fails to pay for costs incurred by the City within 30 days of the date the written demand is placed in the mail, the City may make the costs a lien upon the real property described herein by recording a notice with the County Recorder of San Luis Obispo County that it incurred expenses under the terms of this Agreement. The notice shall state that the City has incurred costs under the terms of this Agreement, the amount of those costs, that the expense is unpaid, and that the expense will draw interest at the rate of 10 percent per year until paid. The remedy described herein is in addition to and is not and shall not be construed as a limitation on any other remedies available to the City.
- i. *Additional Remedies.* As an alternative to the lien procedure set forth in paragraph a, above, City may bring a legal action to collect the sums due to it under this Agreement. Property Owner hereby agrees that if legal action by City is necessary to collect any amount expended by City, Property Owner is responsible for payment to City of its attorneys' fees and court costs together with all other costs, including interest, accrued hereunder.

**12. Expiration and Revocation.** City reserves the right to revoke this Agreement and the associated encroachment permit at any time by giving Property Owner 30 days prior written notice of its intention to revoke the Agreement and encroachment permit, with or without cause and for any reason whatsoever. In the event of revocation, within 60 days of the date of notice to revoke the Agreement and encroachment permit, Property Owner agrees to remove at his/her expense the Improvements and any other encroachments.

**13. Notices.** All notices permitted or required under this Agreement shall be mailed (registered or certified, postage prepaid, return receipt requested), delivered by express carrier (return receipt requested), or hand delivered to the respective parties in writing at the following address, or at such other address as the respective parties may provide in writing for this purpose. All notices delivered by hand or express carrier shall be deemed received upon delivery. Notices delivered by mail shall be deemed received three (3) business days after such mailing.

Notices to the City shall be addressed:

CITY:

City of El Paso de Robles  
1000 Spring Street  
Paso Robles, CA 93446  
Attn: City Engineer

PROPERTY OWNER:

California Athletic Club, Inc.  
Neal Tardiff  
~~P.O. Box 1446~~  
San Luis Obispo, CA 93406

GORDON MCKAY  
1933 LUFF DR #26  
SB, CA 93109

Any party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

**14. Transfer of Property.** When Property Owner ceases to own the Property, Property Owner shall file with the City a notice containing the new owner's name and address; a copy of the deed that transferred Property Owner's interest in the property; and a written assignment between the City, Property Owner, and new owner assigning Property Owner's rights and obligations under this Agreement to the new owner. Upon doing so, the subsequent grantee is charged with the obligations of this Agreement.

**15. Miscellaneous.**

- j. *Time is of the essence.* Time is of the essence with respect to all provisions of and obligations under this Agreement.
- k. *Amendments.* The provisions of this Agreement may be amended by mutual written consent of both parties. However, this Agreement shall not be altered in any way or extinguished by any party without City's prior written and recorded consent.
- l. *Integration.* This writing, together with the encroachment permit and related documents, is the full, final, and exclusive statement of the parties' Agreement and supersedes any and all prior agreements between the parties, oral or written, and any and all amendments thereto. Any oral representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification, signed by the parties to be charged. Each party acknowledges that no agent or representative of the other party has made any promise, representation, or warranty, express or implied, not expressly contained in this Agreement, that induced the party to sign this document. The parties agree that this Agreement shall not be amended or modified, except in a writing signed by all parties, and shall not be construed against the City as drafter of the Agreement.

- m. *Power to execute.* Each person executing this Agreement hereby represents and warrants that he or she has the full power and authority to execute this Agreement on behalf of the named parties.
- n. *Attorney-in-fact.* Property Owner appoints City its attorney-in-fact to do all acts and things that City considers necessary to restore or maintain the Improvements and any other encroachments.
- o. *Joint and several liability.* If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.
- p. *No third party beneficiaries.* This Agreement shall not be construed to create any third party beneficiaries. This Agreement is for the sole benefit of the parties, and their permitted successors, transferees, and assignees, and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any of its terms.
- q. *Successors and assigns.* It is agreed that this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors in interest, and assigns of the respective parties hereto.
- r. *Delays and waivers.* No delay on the part of any party hereto in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power, or privilege hereunder operate as a waiver of any other right, power, or privilege hereunder, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise of any other right, power, or privilege hereunder.
- s. *Litigation costs and fees.* In the event of any litigation or other action between the parties arising out of or relating to this Agreement or the breach thereof, the prevailing party shall be entitled, in addition to such other relief as may be granted, to its reasonable costs and attorneys' fees.
- t. *Invalidity.* If any provision of this Agreement is adjudged invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- u. *Related acts.* Each party hereto agrees to execute and deliver such other documents and perform such other acts as may be necessary to effectuate the purposes of this Agreement.
- v. *Consent to jurisdiction and venue.* This Agreement is entered into within the State of California, and all questions concerning the validity, interpretation, and performance of any of its terms or provisions, or any of the rights or obligations of the parties

hereto, shall be governed by and resolved in accordance with the laws of the State of California. The parties agree that the proper venue for any action arising out of or relating to this Agreement, the breach thereof, or other documents delivered pursuant to any provisions thereof, shall be San Luis Obispo County. The parties hereby consent to the exercise of personal jurisdiction over them by any such court for purposes of any such action or proceeding.

- w. *Construction of agreement.* This Agreement shall be construed as if prepared by all of the parties hereto. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived.
- x. *Termination of obligations upon property transfer.* The obligations upon the parties signing this Agreement terminate personally as to them when they convey their interest in the Property and file for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner takes title subject to the requirements of this Agreement.
- y. *Exhibits.* All exhibits attached hereto form material parts of this Agreement.

**16. Permit Fee.** Property Owner agrees to compensate City in the amount of **One Thousand Dollars (\$1,000)** to offset legal and related expenses in return for granting an Encroachment Permit pursuant to this Agreement, which shall be due and payable to City within thirty (30) days of the execution date of this Agreement.

**17. Notice of Taxable Possessory Interest.** In accordance with Revenue and Taxation Code Section 107.6, this Agreement may create a possessory interest subject to personal property taxation for which Property Owner shall be responsible.

**18. Effective Date.** The parties hereby agree that the effective date of this Agreement, and the effective date for all obligations of the parties hereunder, shall be the date on which this Agreement has been fully executed by both parties.

*{Signatures on following page}*

IN WITNESS WHEREOF, the parties have executed this Agreement on \_\_\_\_\_  
\_\_\_\_\_.

CITY OF EL PASO DE ROBLES, a municipal corporation	PROPERTY OWNER: California Athletic Club, Inc.
By: _____ Tom Frutchey, City Manager	By:  Neil Tardiff, Vice President Gordon McKay, President By: _____
ATTEST:  By: _____ Kristy Buxkemper, Deputy City Clerk	
APPROVED AS TO FORM"  By: _____ Iris P. Yang, City Attorney	

\*Notarial Acknowledgement Required

**See Attached Notary Document**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

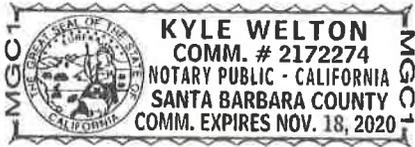
A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Santa Barbara

On February 1, 2018 before me, Kyle Welton, Notary

Personally appeared Gordon Dennis McKay  
Name(s) of Signer(s)



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.

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 [Handwritten Signature]  
Kyle Welton, Notary Public

Place Notary Seal Above

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title of Type of Document: Revocable Encroachment Agreement

Document Date: 2/1/18 Number of Pages: 12

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

- Signer's Name: \_\_\_\_\_
- Individual
- Corporate Office – Title(s): \_\_\_\_\_
- Partner -
- Attorney in Fact

- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Assessor's Parcel No. 025-371-025, located in the City of Paso Robles, County of San Luis Obispo, California.

**EXHIBIT B**

**FINAL APPROVED DESIGN DRAWINGS FOR IMPROVEMENTS**

**[TO BE INSERTED]**

**Exhibit B**