

RECORDING REQUESTED BY:

City of Imperial Beach

WHEN RECORDED, MAIL TO:

*City of Imperial Beach
Office of the City Clerk
825 Imperial Beach Boulevard
Imperial Beach, CA 91932*



3568

DOC# 2023-0140776



May 30, 2023 04:53 PM

OFFICIAL RECORDS
JORDAN Z. MARKS,

SAN DIEGO COUNTY RECORDER
FEES: \$35.00 (SB2 Atkins: \$0.00)

PAGES: 8

NO TRANSFER TAX DUE

NO FEE PER CALIFORNIA GOV'T CODE SECTION 6103

**ENCROACHMENT MAINTENANCE AND REMOVAL AGREEMENT
FOR 985 FERN AVENUE (APN 632-183-01-00)
CITY OF IMPERIAL BEACH**

This **AGREEMENT** for the encroachment of certain improvements in the public right-of-way is entered into between the CITY OF IMPERIAL BEACH (hereinafter referred to as "CITY") and **GIAN-PAUL LANDERER** (hereinafter referred to as "PERMITTEE"), on its own behalf and on behalf of future purchasers of the property described below. PERMITTEE and CITY agree as follows:

RECITALS

A. PERMITTEE is the owner of certain real property located in the City of Imperial Beach, California, more particularly described as:

Assessor's Parcel Number (APN #): 632-183-01-00 and legally described as:

LOT 235 OF IMPERIAL BEACH TERRACE UNIT NO. 2, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THEREOF MAP NO. 2974, FILED IN THE OFFICE OF THE COUNTY RECORDER OF APRIL 8, 1953.

Also known as: 985 Fern Avenue, Imperial Beach, CA 91932

(hereinafter referred to as the "PROPERTY"),

And has proposed to encroach within the public right-of-way. This Agreement is required pursuant to encroachment permit **TEP-23-0410**.

AGREEMENT

NOW, THEREFORE, for consideration of CITY's approval, IT IS HEREBY AGREED AS FOLLOWS:

1. Subject encroachment into public right-of-way: Wood fence behind the sidewalk (approximately 4' in height) that runs along the northeast corner to the northwest corner of the front yard off Fern Street and also running from the driveway north to the northwest corner of the front yard off Essex Street; and landscaping behind the wood fence; (the "Encroachment").
2. The City of Imperial Beach grants the undersigned Permittee the permission to encroach upon and use the aforementioned right-of-way for the purpose of installing, constructing, and maintaining the Encroachment.
3. This encroachment permit does not grant Permittee a permanent right to encroach upon the public right-of-way. The Permittee agrees to remove the Encroachment and restore the above right-of-way to a condition so that it may be used by the public, at no cost or expense to the City, and within (thirty (30) days notice from the City of the termination of this

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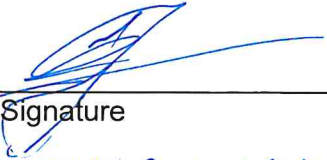
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- encroachment permit. If the right-of-way is not satisfactorily restored, City may perform the work, and the cost thereof shall be a lien against the property listed above.
4. Permittee agrees that Permittee 's duties and obligations under this covenant are a lien upon the Benefited Property. Upon 30-day notice, and an opportunity to respond, the City may add to the tax bill of the Benefited Property any past-due financial obligation owing to the City by way of this covenant.
 5. The Permittee agrees on behalf of itself, its heirs, successors, and assigns, to preserve and save harmless the City, its officers and employees from any liability or responsibility for any accident, loss, or damage to persons or property happening or occurring as a proximate result of the negligence of the Permittee or its agents, servants, employees, or contractors in the design or performance of any work undertaken under this encroachment permit.
 6. By accepting the benefits herein, Permittee acknowledges title to the City Property to be in the City and waives all right to contest that title.
 7. Permittee agrees to maintain the shade trees located within the fenced yard of the property. The front yard, inclusive of the trees, must be permanently maintained with landscaping. Such landscaping shall be maintained in a manner satisfactory to the City.
 8. If either party is required to incur costs to enforce the provisions of this covenant, the prevailing party shall be entitled to full reimbursement for all costs, including reasonable attorney's fees.
 9. Permittee waives the right to assert any claim or action against the City arising out of or resulting from the revocation of this permit or the removal of any improvement or any other action or omission by the City, its officers, agents, employees, representatives, or volunteers related to or arising out of this permit, except for willful misconduct.
 10. Permittee recognizes and understands that this permit may create a possessory interest subject to property taxation and that the Permittee may be subject to the payment of property taxes levied on such interest.
 11. Permittee will maintain the encroachment at Permittee's sole expense for as long as the encroachment remains in existence.
 12. Permittee shall obtain, and during the term of this permit, shall maintain a policy of general liability insurance from an insurance company authorized to do business in the State of California in an insurable amount of not less than one million (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate. The insurance policies shall remain in full force during the life of the permit, and shall not be canceled or not renewed without thirty (30) days prior written notice to the City from the insurance company. The City and its officials, employees, contractors, agents and volunteers shall be named as additional insureds. All insurance shall be primary and non-contributory. Costs of defense shall be outside the policy limits. The Permittee shall have its current general liability insurance policy on file with the City, including an Additional Insured Endorsement.
 13. Permittee shall keep the sidewalks around this improvement safe, clear and unobstructed for pedestrian traffic.
 14. If any portion of the improvement is determined to be a pedestrian hazard, public nuisance or a public safety hazard in any way, as determined by the Public Works Director in his/her sole discretion, then all or any portion of the improvement shall be removed, at the City's

- option, by Permittee at the Permittee's sole expense or by the City at the Permittee's expense.
15. Any design changes to the encroachment area require the prior written approval of the Public Works Director.
 16. Should the Permittee or the Permittee's contractor or agent add improvements to the public right-of-way where there is an existing street tree or a new or replacement tree is planted, approval of the work by the Public Works Director is required. The Permittee and contractor or agent performing the work shall assume any responsibility for repair and/or replacement of those private improvements, should those improvements be damaged by root intrusion, or for any other cause, by a City street tree.
 17. Permittee shall comply with all applicable laws related to the construction, maintenance, or removal of the encroachment or any action or omission in connection with any rights or obligations under this permit.
 18. As a condition precedent to Permittee's right to go upon the City Property, this permit must first be signed by the Permittee, notarized, executed by the City, and recorded with the County Recorder of the County of San Diego.

IN WITNESS WHEREOF, the City and Permittee have executed this Agreement on the 24
day of MAY, 2023.



Signature
GIAN-PAUL LANDERER

Printed
OWNER

Title

Signature

Printed

Title

CITY OF IMPERIAL BEACH, A MUNICIPAL CORPORATION



Tyler Foltz
City Manager

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 San Diego)

On 05/24/2023 before me Odette Gonzalez, Notary Public, personally appeared Gian-Paul Landerer, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person 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]



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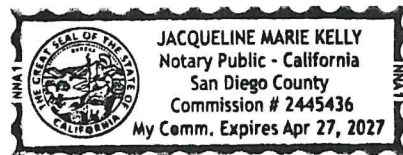
State of California)
County of San Diego)

On May 25, 2023 before me Jacqueline Marie Kelly, Notary Public, personally appeared Tyler Paul Holtz, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 Jacqueline M. Kelly



CERTIFICATE OF ACCEPTANCE

This is to certify that the easement on the real property (APN **632-183-01-00**) conveyed by the Encroachment AGREEMENT dated May 25, 2023 from **Gian-Paul Landerer**, title to the City of Imperial Beach, a municipal corporation, is hereby accepted by the undersigned officer or agent on behalf of the City Council of the City of Imperial Beach pursuant to **Temporary Encroachment Permit TEP-23-0410**, approved on May 26, 2023, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: 5/25/23

By: Tyler Foltz
Tyler Foltz

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.

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Signature

Jacqueline M. Kelly

