

**RECORD WITHOUT FEE
PURSUANT TO GOV'T CODE § 6103**

Recording Requested by:
Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:
Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Form per Gov't Code § 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

**AGREEMENT AND COVENANT RUNNING WITH THE LAND
TO INSTALL AND MAINTAIN A WROUGHT IRON FENCE WITHIN THE
PUBLIC RIGHTS-OF-WAY**

[Restriction on 3420 Warburton Avenue, Santa Clara, CA]

This Agreement and Covenant Running with the Land ("Covenant") is made and entered into on this ____ day of _____, 2019 ("Effective Date"), by David L. Ham, Daniel D. Ham and Jayne Yeh Ham, Trustees under the David L. Ham Living Trust dated March 23, 2015 ("Owner"), and the City of Santa Clara, California, a chartered California municipal corporation ("City").

RECITALS

- a. WHEREAS, Owner is the sole and exclusive owner of real property commonly known as 3420 Warburton Avenue in the City of Santa Clara, California, and is shown on the 2018-19 Santa Clara County Property Tax Roll as Assessor's Parcel No. 220-02-033 ("Property"). Property is also known as Lot 1 and Part of Lot 2 as shown on that Tract No. 659 filed for record in Book 24 of Maps, at Page 40, Santa Clara County Records.
- b. WHEREAS, City is the owner of Warburton Avenue, a public right-of-way.
- c. WHEREAS, Owner wishes to install and maintain an iron fence within said public rights-of-way.
- d. WHEREFORE, the Parties enter into the following Covenant:

COVENANT

1. Owner proposes to install and maintain and City agrees to permit certain private improvements ("Improvements") in the street rights-of-way described and limited to the following:

4.5-foot tall wrought iron fence with two vehicle gates. The boundaries of Improvements encroachment are show on attached Exhibit "A", attached hereto and incorporated herein by this reference.

2. Owner shall maintain, at Owner's expense, Improvements in a safe condition in compliance with City ordinances, rules, regulations, and such terms and conditions as all of the aforesaid are required by City from time to time. City approval of Improvements does not constitute approval on behalf of public utility companies. Approval of public utility companies shall be obtained separately by Owner. If, in the future, Improvements are removed, the area they are removed from shall be left in a safe condition. Removal shall be at Owner's expense and performed under an Encroachment Permit issued by City. Upon removal of Improvements, confirmation by City that the site has been returned to its original or better condition, and payment of applicable processing fee, City shall release Owner's obligations under this Covenant by recording a Release of Interest at the County of Santa Clara Recorder's Office.
3. Owner shall permit public utility companies, the City, and their respective officers, employees, and agents to enter upon Property so that there is access to the street right-of-way for the purpose of installation, modification, repair, maintenance, removal or replacement of utility companies and City owned public improvements, facilities or properties situated in the street right-of-way. Owner waives any and all claims for damages or liabilities in connection therewith for property damages incurred as a result of City operations.
4. Owner shall pay City for any damages to City owned facilities caused by the construction or maintenance done by Owner in the street right-of-way. Payment to City shall be made within sixty (60) calendar days of said demand.
5. Owner shall modify, maintain, repair, or remove within sixty (60) days of a written demand of the City Engineer (or designee) at no cost to the City, Improvements (or portion thereof) which prohibits or interferes with the City's ability to maintain, repair, or replace its public facilities located in the street right-of-way. If Owner fails to modify, maintain, repair, or remove Improvements (or portion thereof) within the time frame stated in the written demand of City, City shall cause the work to be done and bill Owner for any and all costs, fees, and expenses related to said work. Payment to City shall be made within sixty (60) calendar days of said demand for payment.
6. If Owner fails to pay City for damage to City facilities or for City caused work the Owner failed to perform upon City demand, City may enforce this Covenant in any manner allowed by law including a levy against the Property.
7. Owner shall defend, indemnify and hold harmless the City, its council, officers, employees, agents, successors and assign from any claims, demands, loss, liability, injury, damage, expense or cost (including reasonable attorney's fees) however same may be caused, which may be sustained, incurred, or asserted against City because of and/or arising from this Covenant, including but not limited to claims for design defect and/or dangerous condition of public property.
8. As used herein, street right-of-way includes not only the roadway traveled by vehicles but the curb and gutter, sidewalk and area between and beyond the sidewalk, if any, to the private property lines or exterior line of right-of-way easements.
9. Each and every covenant made by Owner and/or City in this Covenant is made for the direct

benefit of the respective lands described above or the interests in such lands held by the Parties, their heirs, assigns and/or successors in interest, and shall run with said respective lands or interest in lands, and if applicable, the responsibilities and burdens thereof are imposed on and shall run with said respective lands or interest in lands held by the Parties, their heirs, assigns and successors in interest.

10. The lands of Owner which are burdened by this Covenant and which will have the responsibility and burden for the modification, maintenance, repair, or removal of the Improvements is the above mentioned Property.
11. The lands of City which are benefited by the covenants included in this Agreement are Warburton Avenue, public street owned by City.
12. Enforcement, either to restrain violation or to recover damages, shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant created through this Agreement.
13. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.
14. Owner represents and warrants to City that they are the owner(s) of Property at the time of their signature hereto, and have the authority to enter into this Covenant and the covenants contained herein, and grant such interests as are necessary to effectuate this Covenant.
15. Wherever the term "Owner" is used, it shall refer collectively to the Owner(s) signing this Covenant, and/or Owner's assigns and successors in interest. City and Owner may be referred to herein collectively as the "Parties" or individually as a "Party". It is the express intent of the Parties hereto to have the benefits and burdens of this Covenant run with the land.

[The last paragraph, Paragraph 16, concerning recordation of this Covenant, and the signature blocks are on page 4]

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16. This Covenant shall be recorded by City in the Office of the County Recorder of Santa Clara County.

The Parties acknowledge and accept the terms and conditions of this Covenant as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Covenant shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered municipal corporation

DEANNA J. SANTANA
City Manager

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: 408/615-2210
Fax Number: 408/241-6771

APPROVED AS TO FORM:

BRIAN DOYLE
City Attorney

ATTEST:

NORA PIMEMTEL, MMC
Assistant City Clerk

“CITY”

David L. Ham, Daniel D. Ham and Jayne Yeh Ham, Trustees under the
David L. Ham Living Trust dated March 23, 2015

By: [Signature]

Name: DANIEL HAM

Title: TRUSTEE

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Mailing Address: PO BOX 1328

CUPERTINO, CA 95015

Phone #: 408 319 7419 Fax #: _____

“OWNER” [APN 220-02-033 (2018-19)]

ALL LEGAL OWNER(S) OF PROPERTY MUST SIGN THIS DOCUMENT. IF OWNER(S) IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.

ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE OWNER(S).

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 CLARA } ss

On January 17th, 2019 before me, Christina Trinh, a Notary Public, personally appeared Daniel David Ham, 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]
SIGNATURE OF NOTARY PUBLIC

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:

EXHIBIT "A"

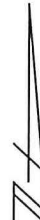
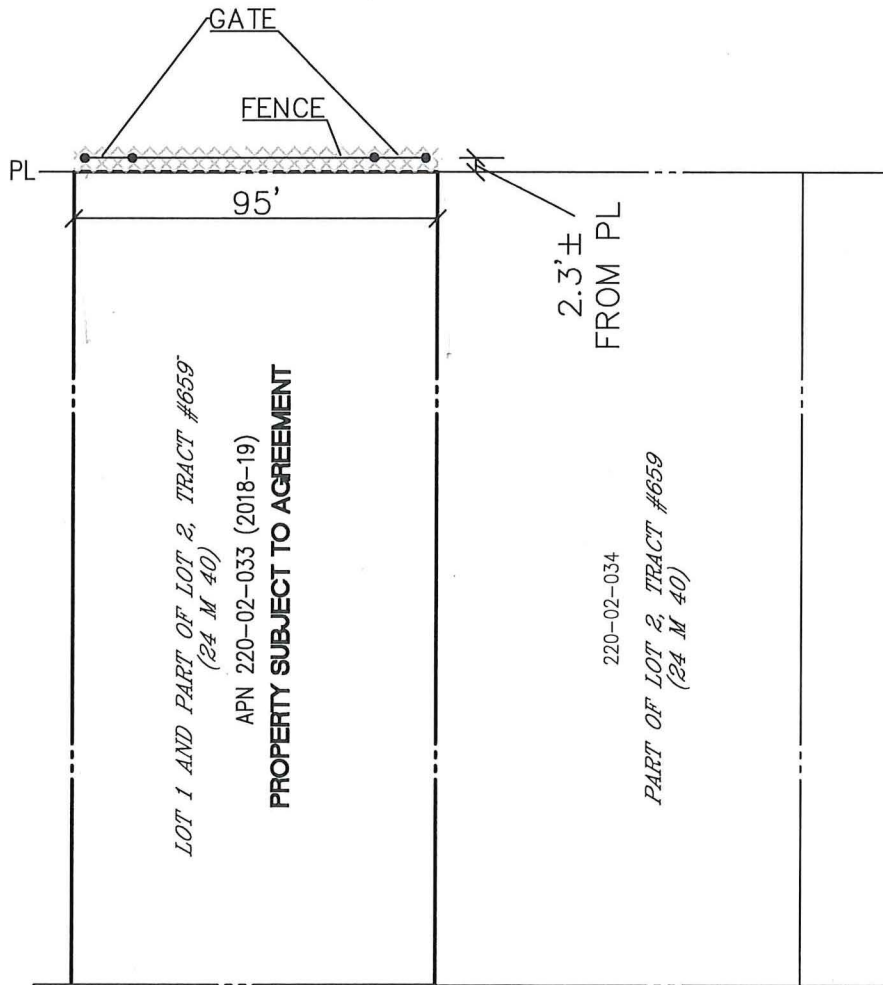


**AREA OF ENCROACHMENT
[4.5 FOOT TALL WROUGHT IRON FENCE
AND TWO VEHICLE GATES]**



LOCATION MAP
NTS

WARBURTON AVE (40' WIDE)



K:\... \AUTOCAD\LPD\BRANDON\SC19116 ROW ENC.DWG

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|---|----------|------------|
| Revised | | |
| Drawn By | BC | 12-11-2018 |
| Checked By | JD | 12-12-18 |
| Approved By | G. Gomez | 12-13-2018 |
| MICHAEL JACK LIW | | |
| ASSISTANT DIRECTOR OF PUBLIC WORKS\ CITY ENGINEER | | |

CITY OF SANTA CLARA
AGREEMENT AND COVENANT RUNNING WITH THE LAND
(PRIVATE CONSTRUCTION OVER PUBLIC EASEMENT)
3420 WARBURTON AVENUE

| | |
|-------------|-----------|
| Scale | NTS |
| Ref. | SC 19,116 |
| Tracing No. | 12,283-A |

12,283-A