

**CITY OF MANHATTAN BEACH  
DEPARTMENT OF COMMUNITY DEVELOPMENT**

**TO:** Parking and Public Improvements Commission

**FROM:** Marisa Lundstedt, Director of Community Development  
Erik Zandvliet, Traffic Engineer

**BY:** Jason Masters, Assistant Planner

**DATE:** April 23, 2015

**SUBJECT:** Consideration of a Long-Term Commercial Use Encroachment Permit to allow two patio heaters attached to the existing eave in the Public Right-of-Way over the sidewalk – 124 Manhattan Beach Blvd. (BREWCO)

**RECOMMENDATION:**

Staff recommends that the Commission **consider** the request at 124 Manhattan Beach Boulevard (BREWCO) to permit two patio heaters attached to the existing eave in the public right-of-way over the sidewalk.

**BACKGROUND:**

An encroachment permit was issued for an eave and signage over the existing sidewalk in the public right-of-way in front of the subject property on October 20, 2009 in the location shown on the attached Vicinity Map. (Attachment A) The Community Development Director has the authority to approve eaves, awnings, signs and similar commercial encroachments administratively. Recently, the applicant filed an Encroachment Permit application to request approval for two patio heaters. Upon submitting the Encroachment Permit, Planning Division staff informed the applicant that such improvements cannot be permitted by staff and require City Council action. The applicant then submitted a Long-Term Commercial Use Encroachment Permit on January 29, 2015. (Attachment B) Per Section 7.36.170 of the Manhattan Beach Municipal Code, commercial use of the public right-of-way requires City Council approval, and Chapter 7.36 provides regulations for all Private Use of the Public Right-of-Way. (Attachment C) The existing eave projects three feet into the public right-of-way; the proposed patio heaters would be attached to the underside of the existing eave within the three foot projection.

**DISCUSSION:**

The submitted plans (Attachment D) show the proposed modifications to the existing eave, with the existing sign above the eave and the proposed patio heaters below the eave extending from 15 inches to no more than three feet into the site's existing sloped encroachment area. The 2013 California Building Code Section 3202.2 prohibits encroachments into the public right-of-way below eight feet in height from the sidewalk below, and the proposal does provide the required eight-foot clearance above the sidewalk.

The subject site has a single story restaurant with a zero setback on the front property line. This section of Manhattan Beach Boulevard is characterized as a wide street in the western portion of Downtown with wide sidewalks (8 feet) and both high-volume pedestrian and vehicular traffic. Several adjacent businesses also have encroachment permits for eaves, awnings and signs, but none for patio heaters or other similar improvements. The only long-term commercial encroachment that has been requested, and approved by the City Council on April 19, 2011, is for a dining balcony over the sidewalk at The Strand House restaurant, across the street from the subject site at 117 Manhattan Beach Boulevard. The encroachment was approved on an appeal by the applicant, the same business owner as the subject application. This encroachment permit application went before the Planning Commission with the Use Permit amendment, and was then sent to the City Council for final action. Although not specifically required by the Code, when the City Council approved this encroachment they considered the findings in Section 7.36.065 and used these for guidance when reviewing the request.

The heaters are proposed over the public sidewalk, but are angled to heat the inside of the restaurant in the front area where there are roll-up garage door type windows that open up the front of the restaurant to the outside. The heaters could be placed on private property but would require modification of the garage door windows and possibly other improvements. The heaters and piping for the gas lines would be visible while walking on the public sidewalk and may distract from the clean edge of the existing eave.

The Municipal Code Section 7.36.170 states that commercial use of the public right-of-way requires City Council approval. Staff's understanding of the purpose of this requirement is to allow the City Council to consider which types of improvements and uses are permissible in the public right-of-way on a case by case basis while considering factors such as sidewalk width, pedestrian and vehicular traffic and the nature of the improvement, as well as the criteria in Section 7.36.065. While the patio heaters will not directly interfere with pedestrian access to the sidewalk, it may encourage customers to loiter outside of the establishment, thus indirectly impeding pedestrian sidewalk flow. If approved a standard Encroachment Permit Agreement, with indemnification and liability insurance will be required (Attachment E) and appropriate conditions may be imposed.

#### Public Input

A courtesy notice of the Parking and Public Improvement Commission meeting was mailed to all property owners within a 300 feet radius from the subject encroachment property in addition to the Downtown Business and Professional Association and the Chamber of Commerce. Staff has not received any correspondence as of the writing of this report.

#### CONCLUSION:

Staff recommends that the Parking and Public Improvement Commission consider the request at 124 Manhattan Beach Blvd. (BREWCO) to permit two patio heaters attached to the existing eave in the public right-of-way over the sidewalk. The Commission's recommendation for the Long-Term Commercial Use Encroachment Permit request will be forwarded accordingly to the City Council for final action.

**Attachments:**

- A. Vicinity Map**
- B. Encroachment Permit Application**
- C. Encroachment Permit Code- Chapter 7.36**
- D. 2013 CBC Chapter 32 – Encroachments into the Public Right-of-Way**
- E. Encroachment plans**
- F. Example Encroachment Permit Agreement**

**cc:**

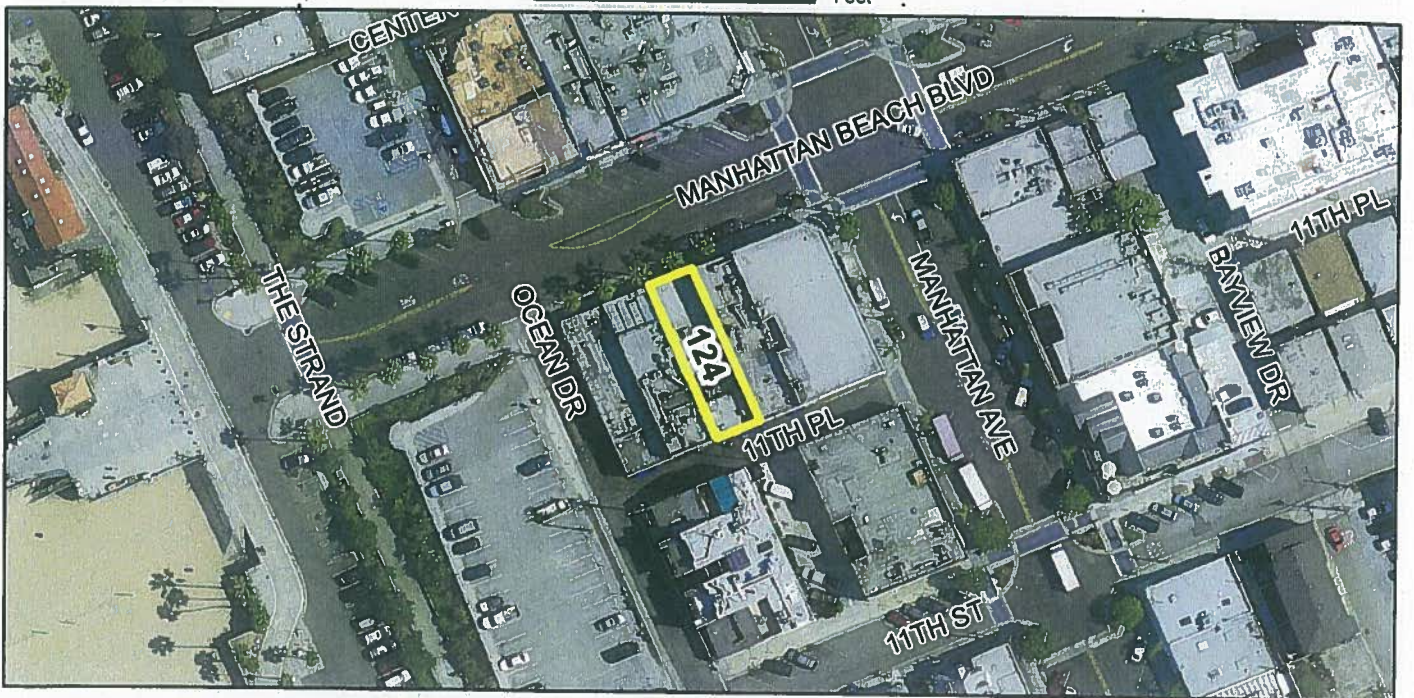
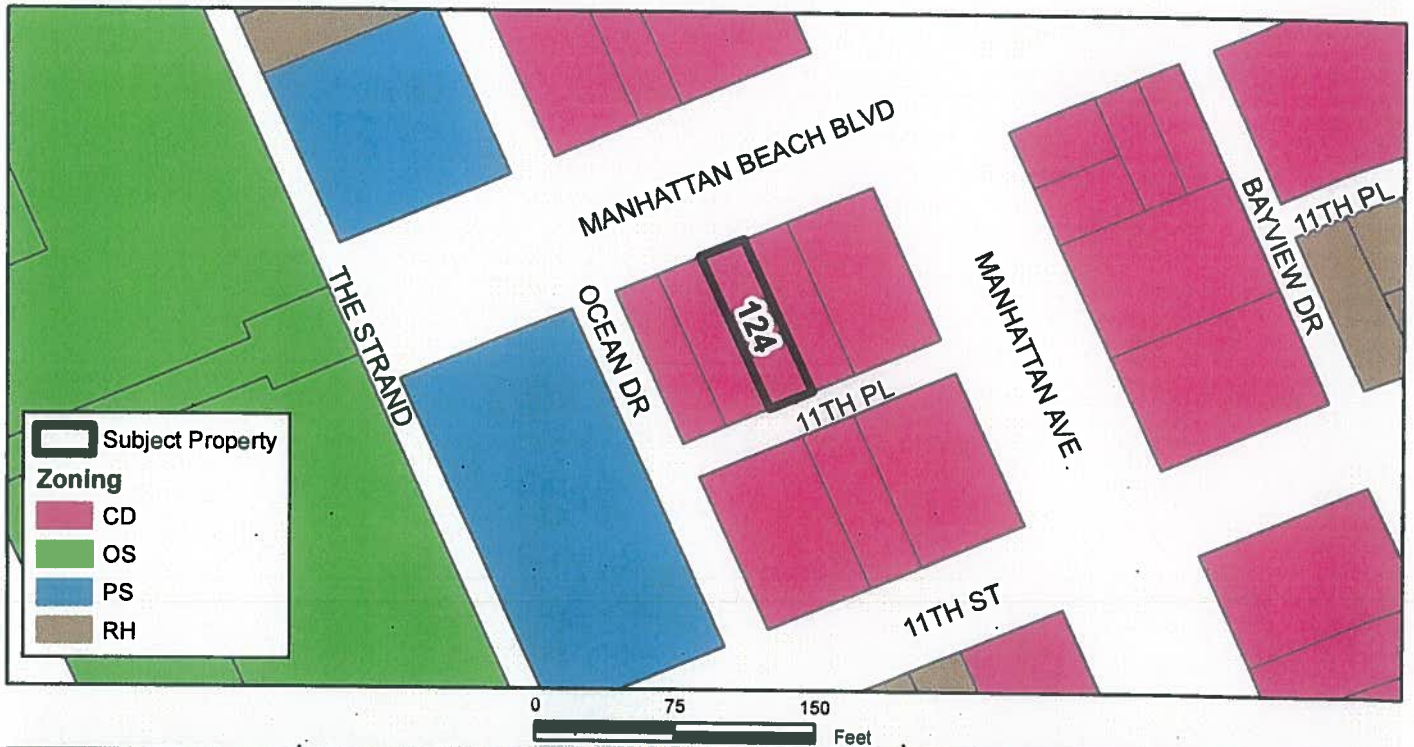
**Michael Zislis, Applicant/Business Owner**

# Vicinity Map

## 124 Manhattan Beach Blvd



April 15, 2015





# ENCROACHMENT PERMIT APPLICATION

Chapter 7.36 MBMC

Manhattan Beach City Hall 1400 Highland Avenue Manhattan Beach, CA 90266  
Telephone (310) 802-5500 FAX (310) 802-5501 TDD (310) 546-3501

Applicant/Agent-Name/number Michael Zisles Date 1/29/15  
Owners MAILING Address 124 Manhattan Beach Blvd Phone # (310) 704-8507  
City: M.B. State: CA Zip: 90266 E-mail ZISLES@comcast.net

PROJECT Address Same as above  
Encroachment Located on M.B. Blvd Street, Avenue, etc. (If on more than one street, note both)  
Name(s) of LEGAL OWNER(s) (AS SHOWN ON TITLE)  
David Zisles & Michael Zisles

Proposed Encroachment (Check all that apply and describe)  Deck/Patio  Fence/Wall  
 Walkway/landings  Steps  Landscaping  
 Irrigation (Plumbing permit required)  Lighting/Electrical (Electrical Permit Required)  Other (Describe)  
patio hecker

Owner certifies he/she has read the standard Encroachment Permit Standards, shall comply with said Standards, and shall not commence the construction of any private improvements in the public right of way without proper approval by the Community Development Department. This Encroachment Permit shall be valid for six (6) months after issuance. Additionally, a right-of-way permit shall be required for all work in the public right-of-way.

Signature (s) [Signature]

Fee Schedule  Permit Application \$1,495.00 Permit Fee (4502):  
 Permit Transfer or Minor Revision \$700.00 Total: \$500.00  
 Permit Appeal to PPIC \$500.00

### For Office Use Only:

Legal Description \_\_\_\_\_  
Map Book \_\_\_\_\_ Page (s) \_\_\_\_\_ APN \_\_\_\_\_  
Bldg Permit # \_\_\_\_\_ (if applicable) New House: Yes \_\_\_ No \_\_\_

Comments/Notes: Water Main location: \_\_\_\_\_  
Sewer Main location: \_\_\_\_\_  
Public Works OK: Yes \_\_\_ No \_\_\_  
Agreement Submitted: Yes \_\_\_ No \_\_\_ Insurance Submitted: Yes \_\_\_ No \_\_\_  
Other: \_\_\_\_\_

Approved / Denied \_\_\_\_\_ Date \_\_\_\_\_  
Community Development Department

**Chapter 7.36 - PRIVATE USE OF THE PUBLIC RIGHT OF WAY – RELEVANT EXCERPTS**  
**Sections:**

**7.36.010 - Scope and intent.**

The provisions of this chapter shall govern use of the public right of way by private parties. The intent of these standards is to allow private use and development of the public right of way with improvements that are functional, attractive and non-obtrusive to the public, consistent with building safety and public works standards, and compatible with public facilities and surrounding developments.

**7.36.030 - Permit required.**

It shall be a violation of this chapter for any person to construct, create, occupy or use an encroachment in the public right of way without an encroachment permit. To the extent permitted by law the issuance of such a permit shall be discretionary and may be denied or revoked without cause. Application of this chapter shall include, but not be limited to, private improvements, long-term commercial use and commercial sidewalk dining, temporary access for installation of private street improvements and all other intrusions into the public right of way whether temporary or permanent. The City Council may, from time to time, by resolution set fees for issuance of encroachment permits authorized by this chapter.

**7.36.060 - Permit conditions.**

**A. Discretionary Conditions.** The Director of Community Development shall have the authority to condition or restrict the permit in any way which shall protect the public health and welfare. The Director of Community Development reserves the right to require phasing of construction projects or limit the hours of construction to reduce the adverse impacts on the public health, safety and welfare. The Director of Public Works has the authority to approve or reject a method of excavation or other construction methodology.

**B. Mandatory Conditions.** In granting an encroachment permit under the provisions of this chapter, the following conditions, in addition to any other conditions deemed necessary or advisable, shall be imposed:

1. That the encroachment shall be removed or relocated by the permittee at no cost to the City upon thirty (30) days' written notice to the permittee from the City, and should any cost be incurred by the City in the removal of such encroachment, such cost shall be a lien upon the permittee's adjacent real property;
2. That the encroachment and permit restrictions, conditions or limitations serving the adjoining property shall be recorded as a covenant, and shall be binding upon all heirs, successors, assigns, executors, or administrators in interest. The covenant shall be disclosed whenever title is transferred;
3. That a certificate of insurance in amounts and form satisfactory to the City Risk Manager shall be filed with the City upon the granting of the encroachment and shall be maintained in good standing at all times so long as the encroachment exists, releasing the City from any and all liability whatsoever in the granting of such encroachment.
4. That the applicant shall expressly agree to each of the conditions imposed, including any which may be in addition to the foregoing, as a prerequisite to the granting of the encroachment by the City.

5. That encroachments involving commercial uses shall pay an established annual or monthly fee to be set by resolution of the City Council and to be based upon the market value of the property being occupied.
6. That in cases where an encroachment is adjacent to a private property common area governed by a Homeowners Association (as in the case of an airspace condominium) the Homeowners Association shall be the applicant and subject to all permit requirements. The permit requirements shall be included as conditions of the project subdivision map and included in the covenants, conditions and restrictions (C, C and R's) recorded for the project.

#### 7.36.105 - Restoration of public right of way.

Upon completion of the encroachment work authorized by a permit, the permittee shall restore the right of way or street by replacing, repairing or rebuilding it in accordance with the specifications or any special requirement included in the permit, but not less than to its original condition before the encroachment work was commenced and in all cases in good usable quality. The permittee shall remove all obstructions, materials and debris upon the right of way and street, and shall do any other work necessary to restore the right of way and street to a safe and usable condition, as directed by the Director of Public Works. Where excavation occurs within areas already paved, the Director of Public Works may require temporary paving to be installed within four hours after the excavation area is backfilled. In the event that the permittee fails to act promptly to restore the right of way and/or street as provided in this section, or should the nature of any damage to the right of way or street require restoration before the permittee can be notified or can respond to notification, the Director of Public Works may, at his or her option, make the necessary restoration and the permittee shall reimburse the City for the full cost of such work, and such cost shall be a lien upon the permittee's adjacent real property.

#### 7.36.150 - Encroachment standards.

##### A. General Standards:

1. Structures as defined by the City's Building Code or other encroachments are prohibited from encroaching within the public right of way unless in compliance with these standards or approved by the City Council.
2. Landscaping is permitted without an encroachment permit in accordance with an approved landscape plan pursuant to Section 7.32.080(E) of the Municipal Code. Artificial landscape materials, except artificial turf grass approved by the Director of Community Development, are prohibited.
3. Utility obstructions shall be avoided so as to maintain access to underground utilities. A minimum of thirty inches (30") of clearance is required on each side of all water and sewer mains, unless otherwise approved by the Director of Public Works.
4. Drainage from a private collection system that discharges a concentrated flow shall be directed to a vehicular street or alley pursuant to Public Works Department construction standards and shall be prohibited from flowing onto a public pedestrian walkway or sidewalk. A drainage plan shall be provided with an application for an encroachment permit.
5. All encroachments shall be in conformance with Title 5, Chapter 5.84 of the Municipal Code pertaining to storm water pollution control.
6. Obstructions to neighboring resident's scenic views shall be avoided.
7. Steps and Stairs, other than risers between four and seven inches (4" to 7") in height and spaced a minimum of three feet (3') apart, are not permitted in the public right of way.  
Exception. One (1) set of steps comprised of three (3) consecutive risers is permitted provided a condition does not result that requires installation of a guardrail or handrail.

8. Existing improvements which do not conform to current standards must be removed or brought into conformance if the related structure on the adjoining property is significantly remodeled or reconstructed or if any new significant construction is proposed in the public right of way. Existing permitted improvements that have been made non-conforming by changes to these standards may otherwise remain provided any nonconforming element is not increased or expanded. The intent is to cause nonconforming encroachments to be brought into conformity concurrent with major alterations or entirely new structures constructed on adjoining private property.
9. Routine maintenance and repair may be performed on a nonconforming encroachment structure or improvement and replacement with a comparable improvement is permitted upon demonstration that the encroachment is deteriorated and creating an unsafe condition.

**7.36.170 - Long-term commercial use encroachment permits.**

**A. Commercial use of the public right of way requires City Council approval.**

Exceptions. The Director of Community Development may approve the following:

- a. Sidewalk dining permits applicable to vehicular streets in conformance with Section 7.36.110 of this chapter.
- b. Building projections such as eaves, awnings, signs or elements that benefit the public and comply with applicable codes.
- c. Roof access or other elements for existing buildings that are required by applicable codes, when alternative on-site locations are not feasible.

**B. Commercial use of a walk street is prohibited.** Existing long-term uses conducted on a walk street under the authority of an Encroachment Permit approved prior to January 21, 2003 may continue to operate provided the use is not expanded or intensified. Expansion of intensification includes but is not necessarily limited to: increase of floor area or expansion of hours of operation, or addition of alcohol beverage service.



## CHAPTER 32

# ENCROACHMENTS INTO THE PUBLIC RIGHT-OF-WAY

### SECTION 3201 GENERAL

**3201.1 Scope.** The provisions of this chapter shall govern the encroachment of structures into the public right-of-way.

**3201.2 Measurement.** The projection of any structure or portion thereof shall be the distance measured horizontally from the lot line to the outermost point of the projection.

**3201.3 Other laws.** The provisions of this chapter shall not be construed to permit the violation of other laws or ordinances regulating the use and occupancy of public property.

**3201.4 Drainage.** Drainage water collected from a roof, awning, canopy or marquee, and condensate from mechanical equipment shall not flow over a public walking surface.

### SECTION 3202 ENCROACHMENTS

**3202.1 Encroachments below grade.** Encroachments below grade shall comply with Sections 3202.1.1 through 3202.1.3.

**3202.1.1 Structural support.** A part of a building erected below grade that is necessary for structural support of the building or structure shall not project beyond the lot lines, except that the footings of street walls or their supports which are located not less than 8 feet (2438 mm) below grade shall not project more than 12 inches (305 mm) beyond the street lot line.

**3202.1.2 Vaults and other enclosed spaces.** The construction and utilization of vaults and other enclosed spaces below grade shall be subject to the terms and conditions of the applicable governing authority.

**3202.1.3 Areaways.** Areaways shall be protected by grates, guards or other approved means.

**3202.2 Encroachments above grade and below 8 feet in height.** Encroachments into the public right-of-way above grade and below 8 feet (2438 mm) in height shall be prohibited except as provided for in Sections 3202.2.1 through 3202.2.3. Doors and windows shall not open or project into the public right-of-way.

**3202.2.1 Steps.** Steps shall not project more than 12 inches (305 mm) and shall be guarded by approved devices not less than 3 feet (914 mm) in height, or shall be located between columns or pilasters.

**3202.2.2 Architectural features.** Columns or pilasters, including bases and moldings shall not project more than 12 inches (305 mm). Belt courses, lintels, sills, architraves, pediments and similar architectural features shall not project more than 4 inches (102 mm).

**3202.2.3 Awnings.** The vertical clearance from the public right-of-way to the lowest part of any awning, including valances, shall be not less than 7 feet (2134 mm).

**3202.3 Encroachments 8 feet or more above grade.** Encroachments 8 feet (2438 mm) or more above grade shall comply with Sections 3202.3.1 through 3202.3.4.

**3202.3.1 Awnings, canopies, marquees and signs.** Awnings, canopies, marquees and signs shall be constructed so as to support applicable loads as specified in Chapter 16. Awnings, canopies, marquees and signs with less than 15 feet (4572 mm) clearance above the sidewalk shall not extend into or occupy more than two-thirds the width of the sidewalk measured from the building. Stanchions or columns that support awnings, canopies, marquees and signs shall be located not less than 2 feet (610 mm) in from the curb line.

**3202.3.2 Windows, balconies, architectural features and mechanical equipment.** Where the vertical clearance above grade to projecting windows, balconies, architectural features or mechanical equipment is more than 8 feet (2438 mm), 1 inch (25 mm) of encroachment is permitted for each additional 1 inch (25 mm) of clearance above 8 feet (2438 mm), but the maximum encroachment shall be 4 feet (1219 mm).

**3202.3.3 Encroachments 15 feet or more above grade.** Encroachments 15 feet (4572 mm) or more above grade shall not be limited.

**3202.3.4 Pedestrian walkways.** The installation of a pedestrian walkway over a public right-of-way shall be subject to the approval of the applicable governing authority. The vertical clearance from the public right-of-way to the lowest part of a pedestrian walkway shall be not less than 15 feet (4572 mm).

**3202.4 Temporary encroachments.** Where allowed by the applicable governing authority, vestibules and storm enclosures shall not be erected for a period of time exceeding seven months in any one year and shall not encroach more than 3 feet (914 mm) nor more than one-fourth of the width of the sidewalk beyond the street lot line. Temporary entrance awnings shall be erected with a clearance of not less than 7 feet (2134 mm) to the lowest portion of the hood or awning where supported on removable steel or other approved non-combustible support.



**AgRECORDING REQUESTED BY:**

City of Manhattan Beach

**WHEN RECORDED MAIL TO:**

Director of Community Development  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, CA 90266

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**ENCROACHMENT PERMIT AGREEMENT**

THIS AGREEMENT is made and entered into at Manhattan Beach, California, this **XX<sup>th</sup>** day of \_\_\_\_\_, 2015, by and between the CITY OF MANHATTAN BEACH, a municipal corporation in the County of Los Angeles, California, hereinafter called the "CITY", and

**INSERT PROPERTY OWNER NAME HERE**

hereinafter called the "OWNER(S)," which parties do **agree** as follows:

1. **INSERT PROPERTY OWNER NAME** represents that it is the Owner(s) in fee of real property located at **INSERT ADDRESS HERE**, Manhattan Beach, legally described as **INSERT LOT, BLOCK TRACT HERE**, as per recorded in **INSERT MAP BOOK HERE, INSERT PAGES HERE**, in the Office of the Los Angeles County Recorder.

2. The parties further agree that the application was presented to the Community Development Department of the City for permission to encroach in and over a portion of **INSERT STREET(S) WHERE ENCROACHMENT IS LOCATED**, with improvements consisting of:

**EXAMPLE LANGUAGE: Two (2) sidewalk dining balconies,**

and, that a sketch of the proposed improvement and encroachment is on file in the Community Development Department of the City and is by reference incorporated herein and made a part hereof; and that permit is hereby granted for that certain encroachment permit herein requested.

3. In consideration of the permission granted by the City to permit the improvements hereinabove described in paragraph 2, in, upon, or over public right of way, the Owner(s) covenant and agree to the following:

- a. Owner(s) shall permit the City, its officers, employees & agents to enter upon said real property at any and every place therein for the purpose of repair, maintenance, or replacement of the facilities or properties on or in said public right of way, hereby waiving any and all claims for damages or liability in connection therewith for property damages incurred;
- b. Owner(s) shall give at least 24 hours' notice to the Community Development Department of the City requesting inspection of any and all improvements relating to this permit;
- c. Owner(s) shall reimburse the City for any damages caused to City-owned facilities by construction or maintenance of the encroachment over said public right of way by the Owner(s), their heirs, successors or assigns;
- d. Owner(s) shall remove the encroachment at their own expense upon thirty days written notice by the City to the Owner(s), their heirs, successors or assigns, in the event, in the opinion of the city, the public right of way becomes necessary for a paramount municipal purpose. Should any cost be incurred by the City in the removal of the encroachment, such cost shall be a lien upon the subject property.
- e. Owner(s) shall hold and save the City harmless from any action at law whatsoever or at all or from any claim or damage by reason of the maintenance of the encroachment over the right of way owned by the City.
- f. This permit is issued to the Owner(s) only as legal Owner(s) of the real property hereinabove described in paragraph 1 of this agreement, which is the hereindescribed contiguous parcel. Upon sale of the above parcel, this Encroachment Permit shall not succeed to the new Owner(s) except upon review of the City of Manhattan Beach and reissuance to the new owner(s) upon said new Owner(s) application. In the event that the new Owner(s) does/do not apply for an Encroachment Permit for the continued use of the hereindescribed land as conditioned by this permit, the undersigned Owner(s) shall restore the land described herein within fifteen (15) days of recordation of the sale.

- g. Owner(s) shall perform all work in accordance with City policy, standard specifications, and ordinances.
- h. Owner(s) recognizes and understands that this permit may create a possessory interest subject to property taxation and, further, Owner(s) agrees(s) to make payment of any property taxes levied on such interest.

4. The Owner(s) further agree(s) to insure the City against all risks of loss by reason of construction or maintenance of the encroachment by (1) naming the City as an additional insured on the Owner(s)' public liability and property damage insurance policy carrying a combined single limit coverage of **\$1,000,000** against any injury, death or loss arising out of the encroachment, (2) filing the "City of Manhattan Beach Encroachment Endorsement" duly executed by the Owner'(s) insurance carrier, and (3) further agreeing that failure to maintain such insurance policy shall be grounds for cancellation of this permit.

5. This agreement shall be recorded in the Office of the Recorder of Los Angeles County, State of California.

OWNER(S) (notarized)

PROPERTY OWNER NAME

CITY OF MANHATTAN BEACH

LAURA MARIE JESTER  
Planning Manager

