



OWNERS MUST SIGN AND NOTARIZED PRIOR TO FINAL.

file

Return Address:

City of Mercer Island  
Attn: City Attorney  
9611 SE 36<sup>th</sup> Street  
Mercer Island, WA 98040

RY  
LEFT ORIGINAL FOR JACOB'S SIGNATURE & RECORDING. 6/26/06

8715  
85<sup>th</sup> AVE

### ENCROACHMENT LICENSE AGREEMENT

**Grantor:** City of Mercer Island, a Washington municipal corporation  
**Grantee:** Brian and Jael Burns, husband and wife.  
**Property Legal Description (abbreviated):** Lot 30 and a portion of Lot 31, Benotho Beach, According to the unrecorded plat thereof  
Full legal on Attachment "A"  
**Property Tax Parcel ID No.:** 0736100180

THIS ENCROACHMENT LICENSE AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004. The parties ("Parties") to this Agreement are the City of Mercer Island, a Washington municipal corporation ("Grantor") and Brian and Jael Burns ("Grantee").

- A. Description of Property.** The Grantee owns certain real property commonly known as 8715 83<sup>th</sup> Ave. SE (street address), and legally described in Attachment A ("Property").
- B. Improvements.** Grantee wishes to construct or plant or has constructed or planted the private improvements described in Attachment B ("Improvements"). These Improvements currently encroach or will encroach on property owned by the City of Mercer Island commonly known as 83<sup>th</sup> Ave. SE or Benotho Place (street name) and legally described as 85<sup>th</sup> Ave. SE street right of way ("City Property").

NOW, THEREFORE the Parties agree as follows:

**1. License.** The Grantor hereby grants a temporary, nonexclusive license to Grantee to permit the Improvements to remain or to be constructed on the City Property so long as the Improvements continue to meet the conditions specified in the Right of Way Use Permit, do not interfere with the reasonable public access to the City Property, do not threaten public health, safety or welfare, and/or Grantor does not wish to use the City Property for any other purpose. This license may be revoked by the City at any time with or without cause.

**2. Agreement to Remove.** In the event the City Engineer determines that the Improvements have failed to meet the conditions specified in the Criteria for Evaluating Encroachments set forth in Section 19.06.060 of the Mercer Island Unified Land Development

Code; interfere with reasonable public access to the Property; threaten public health, safety or welfare; or the City wishes to terminate this Agreement for any other reason, the Grantee shall remove or modify the encroaching improvements within sixty (60) days of receiving notice from the City Engineer, at Grantee's sole cost and expense.

In the event the Improvements interfere with routine operations and maintenance of public improvements, the Grantee shall remove the Improvements within fourteen (14) days of receiving notice from the City Engineer, at Grantee's sole cost and expense.

In the event of an emergency, the Grantee shall immediately remove the Improvements or alternatively, the City may enter the Property in order to remove the Improvements and the costs to remove the Improvements shall become a lien on the Property.

Upon removal of the Improvements, Grantee agrees to return the City Property to its original condition or as near to its original condition as reasonably prudent.

**3. Grantor's Remedy if Grantee Fails to Remove.** In the event the Grantee has received notice to remove the Improvements and the removal or modification is not done in a timely fashion or does not meet other removal requirements specified in the removal notice, the Grantor is authorized to do the necessary work or to designate a third party to perform the work. The Grantee shall be responsible for all costs associated with the performance of such work, including reasonable overhead and attorney fees.

The Grantor shall not be responsible for any resulting damage to or destruction of the Improvements. Further, the debt shall be a lien against the Property.

In the event of an emergency that requires immediate repair to the public improvements or access to the public right of way, the Grantor may demolish, remove or modify the Improvements with no notice to the Grantee. The Grantor shall not be liable for any resulting damage to or destruction of the Improvements.

**4. Maintenance of Improvements.** Maintenance of the Improvements shall be the sole cost and responsibility of the Grantee. The Grantee shall maintain the Improvements according to the specifications of the Right of Way Use Permit. If Grantee fails to maintain the Improvements, the Grantor may take steps to ensure that the Improvements do not interfere with reasonable public access to any public property or threaten public health, safety or welfare. These steps may include removing or modifying the Improvements as outlined in Section 2 of this Agreement.

**5. Indemnification.** The Grantee agrees to indemnify, hold the City, its elected officials, officers, employees, agents and assigns harmless from any and all claims, demands, losses, actions, liabilities (including all costs and attorney fees) arising out of damages to persons or property resulting from the construction, location or removal of the Improvements. The provisions of this Section shall survive the expiration or termination of this Agreement.





## ATTACHMENT A

### Legal Description of Owner's Property:

#### LEGAL DESCRIPTION:

BEGINNING AT THE WEST BOUNDARY LINE OF GOVERNMENT LOT 2, SECTION 31, TOWNSHIP 24 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, FROM WHICH POINT THE NORTHEAST CORNER OF SAID LOT BEARS NORTH 0 05'04" EAST, A DISTANCE OF 961.56 FEET; THENCE NORTH 89 58'20" EAST 136.666 FT TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 89 58'20" EAST 70.694 FEET TO A POINT OF A CURVE; THENCE ALONG A CURVE TO THE RIGHT HAVING A UNIFORM RADIUS OF 20 FEET, A DISTANCE OF 30.82 FEET TO A POINT TANGENCY, SAID TANGENT LINE MARKING THE WEST MARGINAL LINE OF THE B.B. HUFFMAN COUNTY ROAD; THENCE ALONG SAID TANGENT LINE FOLLOWING SAID ROAD MARGINAL LINE SOUTH 1 44'51" EAST 145.67 FEET TO THE MEANDER LINE OF LAKE WASHINGTON; THENCE ALONG SAID MEANDER LINE SOUTH 89 58'20.4" WEST 95.38 FEET TO A POINT TO BE HEREINAFTER REFERRED TO AS POINT "X"; THENCE NORTH 3 40'48" WEST 76.15 FEET; THENCE NORTH 3 17'58" EAST 89.15 TO THE TRUE POINT OF BEGINNING.

(BEING KNOWN AS LOT 30 AND A PORTION OF LOT 31, BENOETHO BEACH, ACCORDING TO THE UNRECORDED PLAT THEREOF.)

TOGETHER WITH THAT PORTION OF SECOND CLASS SHORELINE LANDS ADJOINING, LYING EASTERLY OF THE FOLLOWING DESCRIBED:

BEGINNING AT BEFORE MENTIONED POINT "X"; THENCE SOUTH 3 40'48" EAST TO THE OUTER LIMIT OF SAID SECOND CLASS SHORELANDS SAID INTERSECTION BEING THE TERMINUS OF SAID DESCRIBED LINE; EXCEPT PORTION OF SAID SHORELANDS RESERVED AS A DOCKSITE IN A DEED FROM THE STATE OF WASHINGTON RECORDED UNDER RECORDING NUMBER 1579699, IN KING COUNTY, WASHINGTON.

## ATTACHMENT B

### Description of Encroaching Improvements:

Stairway, retaining walls and paver walkway as shown on Attachment B page 2.

# ATTACHMENT B (PAGE 2)

RODNEY L. JUNTUNEN  
 PLANTING DESIGN  
 24200 76 W EDMONDS WA 98026  
 206 793 2644

