

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
City of San Bruno)
567 El Camino Real)
San Bruno, California 94066)
Attention: City Clerk)
)
)
)

(Space Above This Line for Recorder's Use Only)
Exempt from recording fee per Gov. Code § 27383.

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT ("Agreement") is made and entered into on this _____ day of _____, 2013 ("Effective Date") by and between _____ Trustees ("Owner"), and the CITY OF SAN BRUNO, a California municipal corporation ("City").

RECITALS

- A. Owner is the owner of that certain parcel of real property located within the City of San Bruno, County of San Mateo, State of California, described as ("Property").
- B. The Property contains an existing public utility easement, as shown on Exhibit 1 (legal description and included exhibit A plat map). A debris wall is located in the easement.
- C. Owner has requested that City demolish the existing debris wall and reconstruct it in accordance with the drawing attached hereto as Exhibit 2. The newly constructed debris wall is referred to herein as the "Improvements."
- D. City and Owner wish to formalize Owner's obligation to maintain the Improvements in perpetuity once constructed and to clarify the respective rights and obligations of the parties.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the parties agree as follows:

1. Purpose of Agreement. The purpose of this Agreement is to assure the maintenance, periodic inspection, repair, safe operation and, if and when necessary, replacement of the Improvements by Owner at its sole expense in accordance with the standards, including the Maintenance Standards (defined in Section 4 below), set forth herein.

2. Improvements as a Benefit. Owner agrees that the Improvements will materially benefit their Property. Owner acknowledges that the Improvements are not designed or intended to stabilize or retain the existing slope, and Owner remains solely responsible for stabilizing or retaining the slope on the Property, including that portion of the slope within the easement area.

3. Obligations of Owner. Owner, at its sole expense, shall maintain, safely operate, periodically inspect, repair, and, if and when necessary, replace the Improvements, in order to ensure that they are maintained in functional and safe condition in accordance with the Maintenance Standards described in Section 4 below, and industry and City standards applicable to similar improvements.

4. Maintenance Standards. The following standards (collectively, "Maintenance Standards") shall be complied with by Owner and its maintenance staff, contractors and subcontractors in connection with the required maintenance of the Improvements:

A. The Improvements shall be maintained in compliance with all applicable codes, rules, and regulations of the City of San Bruno, the County of San Mateo, and the State of California.

B. Owner shall provide the City with 30 days written notice in advance of starting any repair, reconstruction, demolition, or other work (other than normal maintenance) on the Improvements. Owner shall obtain at Owner's expense an encroachment permit from City prior to starting any work other than maintenance on the Improvements.

5. City's Right to Perform Maintenance. If Owner does not repair, periodically inspect, maintain, care for and, if and when necessary, replace the Improvements on and about the Property in the manner set forth herein, City shall have the right (but not the obligation) to maintain, repair, periodically inspect, care for, remove, and/or replace such Improvements, or to contract for the correction of such deficiencies, after written notice to Owner.

A. Notice to Owner. Prior to taking any such corrective action, City agrees to notify Owner in writing if the condition of said Improvements does not conform to the standards and requirements set forth herein, and to specify the deficiencies and the actions required to be taken by Owner to cure the deficiencies.

Upon notification of any deficiency, Owner shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states that the problem is urgent and relates to the public health and safety, then Owner shall have twenty-four (24) hours to rectify the problem.

B. Lien for Costs of Required Maintenance. In the event Owner fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such deficiency after notification and after expiration of any applicable cure period, then City shall have the right to maintain, repair, care for and, if and when necessary, replace such Improvements at Owner's expense. Owner agrees to pay City upon demand all charges and costs incurred by City for such maintenance, repair and replacement work. Until so paid, City shall have a lien on the Property for the amount of such charges or costs, which lien shall be perfected by the recordation of a "Notice of Claim of Lien" against the Property. This lien shall affect all parcels jointly if portions of the Site have been sold. Any lien in favor of City created or claimed hereunder is expressly made subject and subordinate to any mortgage or deed of trust made in good faith and for value, recorded as of the date of the recordation of the Notice of Claim of Lien, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of any such mortgage or deed of trust, unless the mortgagee or beneficiary thereunder expressly subordinates its interest, of record, to such lien. No lien in favor of City created or claimed hereunder shall in any way defeat, invalidate, or impair the obligation or priority of any lease, sublease or easement unless such instrument is expressly subordinated to such lien.

C. Legal Action. City may bring legal action to collect the sums due as the result of expending public monies to maintain, repair and, if and when necessary, replace any Improvements which are the responsibility of Owner as provided herein. Owner agrees that if City brings legal action to enforce its rights under this Section 5, Owner shall pay City all costs incurred by it, including attorneys' fees and court costs, together with interest from the date City provided notice under Section 5.A, at the rate of seven percent (10%) per annum.

D. Additional Remedies. Owner acknowledges and agrees that City may also pursue any and all other remedies available in law or equity in the event of a breach of Owner's obligations and agreements set forth herein, including but not limited to placing a special assessment on the San Mateo County property tax rolls.

E. Intention of City. Nothing in this Section 5 shall be construed, either expressly or by implication, as indicating an intention of the City to exercise dominion, control, or ownership over the Improvements.

6. No Impairment of Lien. No violation or breach of the agreements, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed

of trust or other financing or security instrument; provided, however, that any successor of Owner to the Site or any portion thereof shall be bound by such agreements, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

7. Right of Entry. Owner and City acknowledge that Owner shall have a right to enter the easement to perform its obligations under this Agreement.

A. Insurance. Owner shall obtain and deliver to City, at no cost to City, certificates of general liability insurance in an amount not less than \$1,000,000 which indicate that City, its elective and appointive boards, commissions, officers, agents and employees are covered as additional insureds under all insurance policies maintained for any activities in the easement by (i) Owner or (ii) any contractor or subcontractor directly or indirectly employed by Owner to perform any such activities. Each of these policies shall also provide that no cancellation, major change in coverage, or expiration may be affected by the insurance company or the insured during the time of performance of the activities, without first giving to City thirty (30) days' written notice prior to the effective date of such cancellation or change in coverage. Owner shall not permit any contractor or subcontractor to commence or continue performing any activities until the certificates or any substitute certificates have been approved by the City's risk manager.

8. Permits and Approvals. To the extent that performance of the activities requires permits or governmental approvals, Owner shall, at its sole cost and expense, obtain such permits and approvals.

9. Indemnification. To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless City, its elective and appointed boards, commissions, officers, agents, employees and consultants ("City Parties"), from and against any and all claims, obligations, demands, liabilities, losses, actions, fines, penalties, expenses or damages (including, without limitation, attorneys' fees) of every kind and nature (individually, "Claim" and collectively, "Claims") which may arise from or in any manner relate to any work performed or services provided under this Agreement by Owner, or Owner's contractors, subcontractors, agents or employees, except for any Claim arising from the sole negligence or willful misconduct of the City Parties. The aforementioned indemnity shall apply regardless of whether or not City has prepared, supplied or approved plans and/or specifications for the Improvements and regardless of whether any insurance required under this Agreement is applicable to any Claims.

10. Agreement Attaches to Land and Binds Owner's Successors and Assigns. This Agreement pertains to and runs with the Property in perpetuity, and shall be recorded against the Property. This Agreement binds the assigns and successors-in-

interest of Owner. City and its successors and assigns, in the event of any breach of this Agreement, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings against Owner or its successors and assigns to enforce the curing of such breach.

11. No Assignment by Owner. Developer may not assign its obligations under this Agreement.

12. Term. The term of this Agreement shall commence immediately upon the Effective Date and shall continue in perpetuity until and unless terminated by City.

13. Notices. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

City: City Attorney
City of San Bruno
567 El Camino Real
San Bruno, CA 94066
Telephone: (650) 616-7057
Facsimile: (650) 742-6515

With a copy to: Director of Public Services
City of San Bruno
567 El Camino Real
San Bruno, CA 94066
Telephone: (650) 616-7003
Facsimile: (650) 742-6515

Owner: Trustees

San Bruno, CA 94066
Telephone: (650) _____

Either party may change its address for purposes of this Section 13 by giving the other party written notice of the new address in the manner set forth above.

14. Default.

A. Any failure by Owner to perform any term or provision of this Agreement shall constitute an "Event of Default" (i) if Owner does not cure such failure

within thirty (30) days following written notice of default from City, or (ii) if such failure is not of a nature which can be cured within such thirty (30) day period, the Owner does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

B. Any notice of default given hereunder shall specify in detail the nature of the failure in performance which City claims constitutes the Event of Default and the manner in which such Event of Default may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure to perform, Owner shall not be considered to be in default of this Agreement.

C. Any failure or delay by City in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies or deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

15. Miscellaneous Terms and Provisions.

A. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

B. Agreement is Final Contract. This Agreement represents the entire understanding of Owner and City as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may not be modified or altered except in writing signed by both parties.

C. Amendment. Except as otherwise provided herein, this Agreement shall be amended only by a written instrument executed by each of the parties.

D. No Third-Party Beneficiary. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any party hereto or give any third person any right of subrogation or action over or against any party to this Agreement.

Nothing herein shall be construed to create a partnership, joint venture or similar arrangement between the parties hereto.

E. Captions and Headings. Captions and headings are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise.

F. Interpretation; Consultation with Attorneys. This Agreement shall be interpreted as though prepared jointly by both parties. Each party to this Agreement expressly states and represents it has consulted with its respective attorneys concerning all portions of this Agreement and has been fully advised by said attorneys with respect to their rights and obligations hereunder. After said consultation and advice, each party voluntarily enters into this Agreement.

G. Governing Law; Venue. The laws of the State of California shall govern the interpretation and enforcement of this Agreement without reference to principles of conflict of laws. Venue for any action brought under this Agreement shall be in the Superior Court of San Mateo County, California.

H. Authority. Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

I. No Agency Relationship. Neither Owner nor any of Owner's agents, contractors or subcontractors are or shall be considered to be agents of City in connection with the performance of any of Owner's obligations under this Agreement.

J. Attorneys' Fees and Costs. Either party may bring a lawsuit to enforce or require performance of the terms of this Agreement, and the prevailing party in such suit or proceeding shall be entitled to recover from the other party's reasonable costs and expenses, including attorneys' fees.

K. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

IN WITNESS WHEREOF, City and Owner have caused this Agreement to be executed on their behalf by their respective officers as of the Effective Date.

CITY

CITY OF SAN BRUNO, a California
municipal corporation

Dated: _____, 2013

By: _____
Connie Jackson, City Manager

ATTEST:

Carol Bonner, City Clerk

APPROVED AS TO FORM:

Marc L. Zafferano, City Attorney

OWNER

_____, Trustees

Date

Date

State of California

County of _____

On _____ before me, _____,

Notary Public, personally appeared _____

personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California

County of _____

On _____ before me, _____,

Notary Public, personally appeared _____

personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit 1

Legal Description of Easement

[To Be Inserted]