OFFICIAL BUSINESS

Document entitled to free

Recording per Government Code

Section 6103

Recording Requested By and When

Recorded Mail To:

City of Santa Monica

1685 Main Street,

Mail Stop 15

Santa Monica, CA 90401

Attention: City Engineer

SPACE ABOVE LINE FOR RECORDING USE

**TIEBACK LICENSE AGREEMENT**

THIS TIEBACK LICENSE AGREEMENT (“Agreement”) is made on this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2020, by and between the CITY OF SANTA MONICA, a municipal corporation organized and existing pursuant to the laws of the State of California and its charter (“City”), and Company Name According to Title Report (“Developer”).

**R E C I T A L S**

1. Developer is the owner of that certain real property located in the City of Santa Monica, commonly known as Address, Santa Monica, California, and more particularly described in Exhibit A attached hereto and incorporated herein by reference (“Development Property”).
2. City is the owner of certain real property, commonly known as Streets/Rights-of-Way Under Which Tiebacks Will Be Installed located immediately to the south/west/east/north of the Development Property as depicted in Exhibit B attached hereto and incorporated herein by reference. Streets/Rights-of-Way Listed in First Sentence of This paragraph is/are sometimes hereinafter referred to collectively as the “Tieback Parcels.”
3. Developer plans to construct a Description of Development (e.g., three-story mixed-use residential building consisting of 51 units over ground floor commercial retail space and 2 levels of subterranean parking) (“Project”) on the Development Property.
4. In conjunction with the development of this Project, Developer proposes to install a tieback anchor system and other foundation forms and supports which will extend below the surface of the Tieback Parcels in the areas depicted in the shoring plans for the Project on file with the City (“Tieback License Area”). The Tieback License Area is also depicted in Exhibit B hereto.
5. City and Developer desire to enter into this Agreement in order to set forth the terms and conditions pursuant to which Developer and its representatives shall be permitted to insert and maintain tieback rods and other foundation forms and supports beneath the surface of the Tieback Parcels in the Tieback License Area.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Grant of Tieback License. City hereby grants to Developer a temporary license to perform subsurface excavation in the Tieback License Area, to install foundation forms and supports in the Tieback License Area, to install a tieback anchor system in the Tieback License Area, and to take all reasonable and usual actions necessary in connection therewith. Any excavation and installation shall be at the sole cost, liability and expense of Developer and its agents, employees and independent contractors and shall conform to the drawings approved in conjunction with the issuance by the City of the building permit for the Project. All installations made by Developer in the Tieback License Area in connection with the Project shall be made in the fashion that they shall be removable by City after completion of the Project without affecting or compromising the Project in the event that City decides to improve or change the use of the Tieback Parcels at some future date.
2. Indemnification; Hold Harmless. Developer shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents and employees, from and against any and all losses, damages, liability, claims, suits, judgments, costs and expenses, whatsoever, including reasonable attorneys’ fees, arising from or in any manner connected to: (i) alterations and improvements in the Tieback License Area and adjacent Development Property, including but not limited to all excavation, tieback installation, tieback removal and related activities performed by Developer, its agents, employees and independent contractors; (ii) the condition and use of the Tieback License Area; (iii) the construction of the Project; and (iv) any negligent or willful acts or omissions of Developer, its agents, employees, independent contractors and invitees, whether such acts or omissions occur in the Tieback License Area or outside the Tieback License Area, including but not limited to acts or omissions on the adjacent Development Property.
3. Removal and Ownership of Tiebacks. Before completion of the Project, Developer must remove all soldier beams to a depth of five (5) feet below the existing surface grade of the Tieback License Area, including all appurtenant shoring materials located within the five (5) foot area. Developer must also de-tension all tieback rods to a minimum depth of fifteen (15) feet below the existing surface grade of the Tieback License Area. With the exception of these requirements, Developer shall not be obligated to remove the tieback anchor system or any other materials installed in the Tieback License Area pursuant to this Agreement. However, once the tiebacks have been de-tensioned, if the City undertakes a project located in the Tieback License Area, Developer agrees to remove, at Developer’s cost, all portions of the tieback anchor system and underpinnings or any other related materials installed in the Tieback License Area to the extent deemed necessary by the City. Such removal shall occur in a time frame that allows the City project to proceed as scheduled, provided that the City shall provide Developer with sufficient notice of the need for such removal.
4. Access to Install Tiebacks. Developer shall not interfere with the public’s use of the surface of the Tieback License Area without first obtaining all necessary licenses, permits, and entitlements as required by applicable federal, state, and local law, including a “Use of Public Property” permit issued by the City. Developer hereby warrants that its agents, employees and independent contractors shall limit their entry upon the Tieback License Area to those instances where the activities requiring entry may not reasonably be performed exclusively on the Development Property. Developer further warrants that at no time shall the activities contemplated under this Agreement impair normal ingress or egress to the surface of the Tieback License Area.
5. Timing to Install Tiebacks. All work and entry upon or over the Tieback License Area shall be done under the supervision of Developer. Developer anticipates that the work contemplated by this Agreement for the installation of tiebacks will commence within number (X) month(s) from execution of this Agreement and should be completed within number (X) month(s) thereafter. Developer further anticipates that construction of the Project should be completed within number (XX) months after execution of this Agreement. The time periods set forth in this Section 5 are estimates only. Developer’s failure to commence or complete the work described in this Section 5 in the time periods set forth in this Section 5 shall in no way whatsoever adversely affect Developer’s rights as granted pursuant to this Agreement.
6. “As-Built” Drawings. Upon completion of the Project, Developer agrees to provide City with “as-built” drawings indicating the actual installed location of all subterranean encroachments into the Tieback License Area arising from the work performed under this Agreement. Developer hereby warrants that City may rely on the “as-built” drawings for any future construction that City may undertake within the Tieback License Area.
7. Nature of Shoring Licenses. The licenses and permissions granted herein shall commence upon execution of this Agreement and shall continue for such time as is reasonably necessary for the purposes set forth herein. These licenses and permissions shall not constitute, in any event, an easement or encumbrance against the Tieback License Area. After completion of the Project, Developer shall de-tension the tieback cables and abandon the same so that thereafter they shall remain below the surface of the Tieback License Area, and Developer shall have no further obligations hereunder except as required by Sections 2 and 3.
8. License Fee. Developer agrees to pay the City a one-time fee in the amount of COST TO PROCESS APPLICATION SPELLED OUT (**$XXX.XX**) concurrently with the execution of this agreement to cover the City’s plan review and administrative costs to issue and administer this Agreement. The City hereby acknowledges and agrees that no other or separate fee shall be paid to City in connection with this Agreement.
9. Relationship of Parties. It is understood that the contractual relationship between City, on one part, and Developer, on the other part, is such that the Developer is an independent contractor and not the agent of City.
10. Attorneys’ Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees and costs from the losing party.
11. Notices. All written notices and demands of any kind which any party may be required or may desire to serve on the other in connection with this Agreement may be served as an alternative to personal service by registered or certified mail. Any such notice or demands served by registered or certified mail shall be deposited in the United States mail with postage thereon fully prepaid, addressed to the party to be served and delivered to the party if not by personal service, as follows:

If to Developer: Firstname Lastname

 Company Name

 123 Streetname Rd

 City, State Spelled Out ZIP

If to City: City Manager

City of Santa Monica

1685 Main Street, Room 209

Santa Monica, California 90401

With a copy to:

City Attorney

City of Santa Monica

1685 Main Street, Room 310

Santa Monica, California 90401

Service of any notice or demand made by mail shall be deemed complete on the date of actual delivery as shown by the addressee’s certified or registered receipt or upon the expiration of the second day after the date of mailing, whichever is earlier in time. Any party hereto may, from time to time by notice in writing served upon the other party as aforesaid, designate a different mailing address or a different person to whom all notices and demands are thereafter to be addressed.

1. Waivers. Waiver by any party hereto of any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or different character.
2. Other Agreements. This Agreement does not in any way affect the terms or validity of other agreements between the City, on the one part, and Developer, on the other part.
3. Assignment. This Agreement shall not be severable from Developer’s interest in the Development Property. This Agreement and the covenants, conditions and restrictions contained herein shall run with the land and shall burden the Development Property for the benefit of the City and shall bind Developer and its heirs, successors and assigns and every successor-in-interest of the Development Property. Any transfer of the Development Property shall automatically operate to transfer the benefits and burdens of this Agreement. Developer may freely sell, transfer, exchange or otherwise dispose of its interests in the Development Property or the Project without the consent of the City, but shall provide City prior written notice of any such transfer.
4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one (1) and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date herein first above written in the City of Santa Monica.

 CITY:

 CITY OF SANTA MONICA,

ATTEST: a Municipal Corporation

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DENISE ANDERSON-WARREN DAVID WHITE

City Clerk City Manager

APPROVED AS TO FORM:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DOUGLAS SLOAN

City Attorney

DEVELOPER:

Company Name

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 FIRSTNAME LASTNAME

 Authorized Signatory

**NOTARIAL ACKNOWLEDGMENT FOR LANE DILG**

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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | ) |  |

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 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.

|  |  |
| --- | --- |
|  |  |
| Notary Public | (SEAL) |

**NOTARIAL ACKNOWLEDGMENT FOR DEVELOPER**

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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | ) |  |

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 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.

|  |  |
| --- | --- |
|  |  |
| Notary Public | (SEAL) |

EXHIBIT A

TIEBACK LICENSE AGREEMENT

LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

LEGAL DESCRIPTION

Assessor’s Parcel Number: **XXXX-XXX-XXXX**

EXHIBIT B

TIEBACK LICENSE AGREEMENT

TIEBACK PARCELS AND TIEBACK LICENSE AREA

ATTACHED AS:

SHEET 10 – EXHIBIT B-1

SHEET 11 – EXHIBIT B-2