

Recorded at the request of:
Contra Costa County
Public Works Department
Engineering Services Division
Return to:
Public Works Department
Engineering Services Division
Records Section

Area: Walnut Creek
Road: Scots Lane
Co. Road No: 4245AF
Project: MS14-0001
APN: 180-210-041

DEFERRED IMPROVEMENT AGREEMENT

(Project: MS14-0001)

THESE SIGNATURES ATTEST TO THE PARTIES' AGREEMENT HERETO:

CONTRA COSTA COUNTY
Brian M. Balbas, Public Works Director

OWNER: (See note below)

By: _____

(signature) Donald S. Mackay 08/02/2022
Donald S. Mackay, Successor Trustee of the Mackay Trust Agreement dated July 17, 1991 (Survivors Trust)

RECOMMENDED FOR APPROVAL:

By: _____
Engineering Services Division

(signature) _____

FORM APPROVED: Victor J. Westman, County Counsel

(NOTE: This document is to be acknowledged with signatures as they appear on deed of title. If Owner is incorporated, signatures must conform with the designated representative groups pursuant to Corporations Code §313.)

(see attached notary)

- PARTIES. Effective on _____, the County of Contra Costa, hereinafter referred to as "County" and Donald S. Mackay, Successor Trustee of the Mackay Trust Agreement dated July 17, 1991 (Survivors Trust) hereinafter referred to as "Owner" mutually agree and promise as follows:
- PURPOSE. Owner desires to develop the property described in Exhibit "A" attached hereto and wishes to defer construction of permanent improvements, and County agrees to such deferment if Owner constructs improvements as herein promised.
- AGREEMENT BINDING ON SUCCESSORS IN INTEREST. This agreement is an instrument affecting the title or possession of the real property described in Exhibit "A." All the terms, covenants and conditions herein imposed are for the benefit of County and the real property or interest therein which constitutes the County road and highway system and shall be binding upon and inure to the benefit of the land described in Exhibit "A" and the successors in interest of Owner. Upon sale or division of the property described in Exhibit "A", the terms of this agreement shall apply separately to each parcel, and the owner of each parcel shall succeed to the obligations imposed on Owner by this agreement. Upon annexation to any city, Owner, or

[Handwritten signature]

those who succeed him as owner of the property described in Exhibit "A," shall fulfill all the terms of this agreement upon demand by such city as though Owner had contract with such city originally. Any annexing city shall have all rights of a third party beneficiary.

4. STREET AND DRAINAGE IMPROVEMENTS:

A. The improvements set forth in this section may be deferred by Owner and shall be constructed when required in the manner set forth in this agreement. The deferred improvements required by County Department of Public Works are generally described on Exhibit "B" attached hereto. Each of said improvements relate to the use, repair, maintenance or improvement of, or payment of taxes, special assessments or fees on, the property described in Exhibit "A."

B. When County Public Works Director determines that there is no further reason to defer construction of the improvements because their construction is necessary for the public health, welfare and safety and/or is necessary to the orderly development of the surrounding area, he shall notify Owner in writing to commence their installation and construction. The notice shall be mailed to the current owner or owners of the property as shown on the latest adopted County assessment roll. The notice shall describe the work to be done by Owner, the time within which the work shall commence and the time within which the work shall be completed. All or any portion of said improvements may be required at a specified time. Each Owner shall participate on a pro rata basis in the cost of the improvements to be installed. If Owner is obligated to pay a pro rata share of a cost of a facility provided by others, the notice shall include the amount to be paid and the time when payments must be made.

5. PERFORMANCE OF THE WORK. Owner shall perform the work and make the payments required by County as set forth herein or as modified by the Board of Supervisors. Owner shall cause plans and specifications for the improvements to be prepared by competent persons legally qualified to do the work and shall submit said improvement plans and specifications for approval prior to commencement of the work described in the notice and to pay County inspection fees. The work shall be done in accordance with County standards in effect at the time improvement plans are submitted for approval. Owner agrees to commence and complete the work within the time specified in the notice given by the Director of Public Works and to notify the County at least 48 hours prior to start of work. In the event Owner or his successor(s) in interest fails to construct any of the improvements required under this agreement, County may, at its option, do the work. A lien is hereby created on all property described in Exhibit "A" for the cost of such work. If County sues to compel performance of this agreement, to recover the cost of completing the improvements or to enforce the aforementioned lien, Owner shall pay all reasonable attorney's fees, costs of suit and all other expenses of litigation incurred by County in connection therewith, and said attorney's fees, costs and other expenses shall also become a lien on the property described in Exhibit "A". If the property described in Exhibit "A" is subdivided at the time said liens are imposed, the amount of said liens shall be divided proportionately among the various parcels. Permission to enter onto the property of Owner is granted to County or its contractor as may be necessary to construct the improvements covered by this agreement.

6. JOINT COOPERATIVE PLAN. Upon notice by County, Owner agrees to cooperate with other property owners, the County, and other public agencies to provide the improvements set forth herein under a joint cooperative plan including the formation of a local improvement district, if this method is feasible to secure the installation and construction of the improvements.

7. REVIEW OF REQUIREMENTS. If Owner disagrees with the requirements set forth in any notice to commence installation of improvements, he shall, within 30 days of the date the notice was mailed, request a review of the requirements by the Board of Supervisors of County. The decision of this Board shall be binding upon both County and Owner.

8. ACCEPTANCE OF IMPROVEMENTS. County agrees to accept those improvements specified in Exhibit "B" which are constructed and completed in accordance with County standards and requirements and are installed within rights of way or easements dedicated and accepted by resolution of the Board of Supervisors. Owner agrees to provide any necessary temporary drainage facilities, access road or other required improvements, to assume responsibility for the proper functioning thereof, to submit plans to the appropriate County agency for review, if required, and to maintain said improvements and facilities in a manner which will preclude any hazard to life or health or damage to adjoining property.

9. BONDS. Prior to County approval of improvement plans, Owner may be required to execute and deliver to the County a faithful performance bond and a payment bond in an amount and form acceptable to County to be released by the Board of Supervisors in whole or in part upon completion of the work required and payment of all persons furnishing labor and materials in the performance of the work.

10. INSURANCE. Owner shall maintain, or shall require any contractor engaged to perform the work to maintain, at all times during the performance of the work called for herein a separate policy of insurance in a form and amount acceptable to County.

11. INDEMNITY. Owner shall defend, indemnify and save harmless the County, its officers, agents and employees, from every expense, liability or payment by reason of injury (including death) to persons or damage to property suffered through any act or omission, including passive negligence or act of negligence, or both, of Owner, his developer, contractors, subcontractors, employees, agents, or anyone directly or indirectly employed by any of them, or arising in any way from work called for by this agreement, on any part of the premises, including those matters arising out of the deferment of permanent drainage facilities or the adequacy, safety, use or non-use of temporary drainage facilities, or the performance or nonperformance of the work. This provision shall not be deemed to require the Owner to indemnify the County against the liability for damage arising from the sole negligence or willful misconduct of the County or its agents, servants, or independent contractors who are directly responsible to the County.



ACKNOWLEDGEMENT

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.

} SS Great Britain and Northern Ireland
London, England } SS
Embassy of the United States of America

ON August 2nd, 2022, BEFORE ME, CASSANDRA HAGAR, Consul
(NAME AND TITLE OF THE OFFICER)

PERSONALLY APPEARED DONALD S. MACKAY,
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHOSE
NAME IS SUBSCRIBED TO THE FOREGOING STATEMENT AND ACKNOWLEDGED TO ME THAT HE
EXECUTED THE SAME IN HIS AUTHORIZED CAPACITY, AND THAT BY HIS SIGNATURE ON THE
INSTRUMENT THE PERSON, OR THE ENTITY UPON BEHALF OF WHICH THE PERSON ACTED,
EXECUTED THE INSTRUMENT.

WITNESS MY HAND AND OFFICIAL SEAL

SIGNATURE: Cassandra Hagar
PRINTED: Cassandra Hagar
TITLE: Consul
United States of America
London, England
Commission Indefinite

(SEAL)

This document contains FIVE pages,
Each initialed by the affiant/grantor

Don

MS14-0001

(Dev:No:form)

EXHIBIT "A"

All that real property situated in the County of Contra Costa, State of California, described as follows:

All of Parcel 180-210-041 as shown on the parcel map of Subdivision MS14-0001, on file at the County Recorder's Office as follows:

Date: _____

Book: _____

Page: _____



RE: MS14-0001

EXHIBIT "B"

IMPROVEMENTS

Improvements required by Contra Costa County Community Development Department and the County Ordinance Code as a condition of approval for the above-referenced development are located along Scots Lane for Parcel 180-210-041 described in Exhibit "A":

1. Construct curb, 4-foot sidewalk, necessary longitudinal and transverse drainage, street lighting, and pavement widening and transitions along the frontage of Scots Lane. Applicant shall construct face of curb 16 feet from the road centerline.
2. All existing utility distribution facilities along the frontage of Scots Lane frontage shall be placed underground.
3. Submit improvement plans to the Public Works Department, Engineering Services Division, for review; pay an inspection and plan review fee.

CONSTRUCTION

Any necessary relocation of utility facilities shall be the responsibility of the owner or his agent.

The construction of the above deferred improvements shall begin as outlined in Item 4B of the agreement or when either of the following occurs:

1. Scots Lane is constructed to its ultimate planned width by the County or by an assessment district.
2. Frontage improvements are constructed adjacent to the subject property.

It is the intent at this time that the "pro rata basis" of costs, as specified in Item 4B of the agreement, shall mean that the owners of each parcel shall pay 1/2 of the costs.

