

FORM D

PUBLIC ART MAINTENANCE COVENANT

(pursuant to El Segundo Municipal Code § 15-34-6)

THIS PUBLIC ART MAINTENANCE COVENANT is entered into _____, 202__, by and between _____ (“Property Owner”) and the City of El Segundo, California (“the City”).

RECITALS:

1. Property Owner owns that certain real property located at _____ in the City (“the Property”) and more particularly described by Exhibit “A” attached hereto and incorporated herein by this reference.
2. On or before the date of this Covenant, Property Owner engaged in development activity on the Property that was subject to El Segundo Municipal Code (ESMC) Chapter 15-34, entitled “Cultural Development.”
3. With City approval and in accordance with ESMC Chapter 15-34, Property Owner acquired and placed at the Property the artwork described and/or depicted on Exhibit “B” attached hereto and incorporated herein by this reference (“the Artwork”).
4. ESMC Section 15-34-6(C) requires, among other things, that Property Owner execute and record a covenant acceptable to the City for maintenance of the Artwork. The parties intend for this Covenant to satisfy that requirement.

COVENANTS:

1. Property Owner shall preserve the Artwork in good repair and in a safe, functional, accessible and clean condition, all in a manner acceptable to the City, and in accordance with the Artist’s maintenance instructions, as applicable.

2. Property Owner shall not deface, mutilate or alter the Artwork nor knowingly allow other persons to do so.
3. Property Owner shall secure and maintain insurance applicable to the Artwork sufficient to protect it against damage or loss from fire, theft, vandalism, and all other insurable occurrences typically covered by an all-risk policy, in an amount to be determined by the City's Risk Manager but not to exceed the reasonable estimated replacement cost of the Artwork.
4. Property Owner shall not move the Artwork from its present location at the Property, as depicted in Exhibit B attached hereto, without the City's prior written approval.
5. Property Owner grants the City an irrevocable license to photograph and otherwise make two-dimensional reproductions of the Artwork and to use such reproductions for commercial and noncommercial purposes as the City sees fit.
6. Within a reasonable period of time following a request by the City, Property Owner shall allow the City and its authorized agents access onto the Property for the purpose of inspecting and photographing the Artwork and ensuring that Property Owner is meeting its obligations under this Covenant.
7. In the event repair of the Artwork is required, the artist who created it shall be given the first opportunity to do that work for a reasonable fee. In the event the artist is unable or unwilling to do so, the City or the Property Owner may proceed to contract for such repair with another qualified artist.
8. In the event the City declares the Artwork a public nuisance pursuant to the El Segundo Municipal Code, the Property Owner must promptly abate the nuisance.
9. This Covenant shall be recorded in the official records of Los Angeles County and shall run with the land described herein as the Property, binding and/or benefiting the parties' respective successors in interest, including but not limited to any purchasers, heirs, devisees, transferees, assignees, tenants, grantees, trustees, and beneficiaries. Should any court find this Covenant unenforceable at law, the parties intend that it be enforceable in equity.
10. To the extent reasonably possible, Property Owner shall provide actual notice of the Covenant to any successors in interest. Failure of Property Owner to provide actual notice shall not preclude enforcement of this Covenant against anyone who receives constructive notice.

11. This Covenant shall be governed by the laws of the State of California.
12. No modification of this Covenant shall be valid unless made in writing and signed by both parties hereto.
13. No waiver of performance by any party shall be construed as or operate as a waiver of any subsequent default.
14. Should any action or proceeding be brought to enforce the terms of this Covenant, the prevailing party shall be entitled to reasonable attorney's fees and costs.
15. Property Owner agrees to defend, indemnify, protect and hold City and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Property Owner's employees, agents, officers or invitees, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of Property Owner and its agents, officers or employees, as a result of any act or obligation of Property Owner arising out of this Public Art Maintenance Covenant, and all expenses of investigating and defending against same; provided however, that Property Owner's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole active negligence or willful misconduct of the City, its agents, officers or employees.

EXECUTION:

This Covenant shall be deemed executed as of the date first above written. The undersigned parties shall acknowledge their respective signatures before a California notary.

PROPERTY OWNER

By: _____

CITY OF EL SEGUNDO By: _____

[PROPERTY OWNER'S AND CITY'S SIGNATURES MUST BE NOTARIZED]

APPROVED AS TO FORM:

City Attorney