

June 28, 2016

Mr. John Resich  
Chairman of the Board  
Green Hills Memorial Park  
27501 S. Western Avenue  
Rancho Palos Verdes, CA 90275

**Re: Inspiration Slope Rooftop Burials; Waiver of Claims**

Dear Mr. Resich:

This letter memorializes the agreement between the City of Rancho Palos Verdes (City) and Green Hills Memorial Park (Green Hills) regarding the placement of concrete vaults on the rooftop of the Inspiration Slope Mausoleum (the Mausoleum) by Green Hills. The representatives of the parties reached an oral understanding to permit placement of concrete vaults on the rooftop of the Inspiration Slope Mausoleum provided that Green Hills agrees that the placement of the vaults does not provide Green Hills with: (i) any entitlement to conduct rooftop burials on the Mausoleum; or (ii) any claims for damages concerning the placement of the vaults should the City deny Green Hills' application for rooftop burials on the Mausoleum. This letter agreement confirms the oral understandings.

**1. Factual Background**

Green Hills operates a memorial park and cemetery located in the City. Green Hills' operation and development of the memorial park is governed by the 2007 Master Plan, including all later amendments (the Master Plan), and by City Council Resolution No. 2015-12, revising and amending conditions of approval for Green Hills' Conditional Use Permit (CUP) and amending the Master Plan (the Resolution). The Master Plan contemplates the construction of the Mausoleum in Area 2 of the memorial park, and further contemplates the possibility of rooftop burials thereon.

The CUP's conditions of approval were revised and updated due to a recent controversy surrounding rooftop burials at another of Green Hill's mausoleums, the Pacific Terrace/Memorial Terrace Mausoleum in Area 11. The rooftop burials in the Pacific Terrace Mausoleum are visible from the condominium building just north of the structure, and have generated complaints and litigation. The City has expended significant public resources to resolve the issues surrounding the rooftop burials, and will expend significant further resources in the foreseeable future to resolve the litigation.

Green Hills acknowledges that the Resolution amended Green Hills' CUP, which now provides for an administrative substantial compliance review so that, except for improvements consistent with the Master Plan or those subject to the Planning Commission, all improvements must be reviewed by the Director to determine if they substantially comply with the Master Plan (Condition 1.k.). Condition 1.k. specifically provides that review of an application for rooftop burials can be performed by the Director. The Director can, at his or her discretion, refer a matter directly to the Planning Commission. Condition 2 provides that the following matters are directly reviewable by the Planning Commission: (i) the construction or modification of a mausoleum or other significant building, (ii) any significant change to the grading, (iii) any development of a future phase of Green Hills where the Master Plan has not designated a development plan or uses, or (iv) any amendment to the Master Plan.

Thus, while rooftop burials at Inspiration Slope are contemplated in the Master Plan, Condition 1.k. of the CUP now provides that Green Hills may not perform such burials prior to obtaining administrative approval from the Director or the Planning Commission, pursuant to the Resolution.

In anticipation of possible rooftop burials, Green Hills has purchased and with the oral understanding memorialized herein, installed concrete vaults on the roof of the Mausoleum. Green Hills intends to cover the vaults with dirt and ground cover, per Condition 22 of the CUP. However, Green Hills has not to date filed an application to conduct rooftop burials at the Mausoleum per Condition 1.k of the CUP. Unless and until Green Hills obtains permission from the Director or the Planning Commission, Condition 1.k provides that Green Hills may not perform rooftop burials at the Mausoleum.

Green Hills does not have a readily available storage space for the vaults which have been ordered and has requested that it be allowed to (i) install the vaults on the roof top, and (ii) bury and backfill them. The City Manager has agreed that Green Hills may store the empty concrete burial vaults on the roof of the Mausoleum, and that such vaults shall be buried and the entirety of the roof shall be backfilled with dirt and ground cover, provided that Green Hills waives any claims for damages against the City related to the placement of the vaults should rooftop burials not be approved for the rooftop at the Mausoleum.

Accordingly, if Green Hills submits an application to perform rooftop burials at the Mausoleum, and should the application be approved by the City, the concrete vaults may be utilized for that purpose. However, in the event that the City decides to deny any application by Green Hills to perform rooftop burials at the Inspiration Slope Mausoleum, Green Hills agrees not to utilize the buried concrete vaults for rooftop burials unless and until it complies with applicable laws and releases the City from any liability or damages to Green Hills related to the placement of the vaults arising from such decision, and assumes all risks therefore, as provided below.

Based on the above, and on the City's police power expressly granted to it by state law, Green Hills agrees that the provisions of this Agreement are reasonable and do not impose an undue burden on Green Hills, and that the provisions of this Agreement are consistent with the agreed-to conditions of approval in the Resolution.

**2. Waiver of Claims Against the City.**

Green Hills acknowledges that any future application for rooftop burials at the Inspiration Slope Mausoleum is within the City's police power expressly granted to it by state law to grant or deny and is consistent with Condition 41.a. of the CUP. Further, the City shall not be liable to Green Hills for any loss or damages related to the placement of the vaults whatsoever arising out of the City's denial of any such application for rooftop burials at Inspiration Slope. Green Hills waives all rights to future claims for damages arising out of the City's rejection of Green Hills' application for rooftop burials at the Inspiration Slope Mausoleum, but reserves the right to legally challenge the validity of any such denial except as may be otherwise provided herein. Green Hills further acknowledges that the denial of such an application does not constitute a compensable interest that would give rise to a takings or other monetary claim.

**3. Police Power.**

Green Hills acknowledges that the City has the authority to grant or deny discretionary applications for uses within the City in part based on concerns of public health, safety, and welfare. Green Hills agrees that the City retains its authority to determine the appropriateness of rooftop burials at the Mausoleum at a future date.

Nothing in this Agreement, shall limit the City's authority to exercise its police powers or governmental authority, or take other appropriate actions to address issues of public health, safety, and welfare. Green Hills acknowledges that no rights arise under this Agreement as to the City's police power, including but not limited to, the approval or denial of any required permits. Further, this Agreement does not constitute a development agreement pursuant to Government Code Section 65864, and thus the Mausoleum remains subject to all applicable statutes, ordinances, regulations, and codes.

**4. Indemnity.**

Green Hills, as a material part of the consideration to the City, shall indemnify, defend, protect and hold the City, its officers, directors, agents, representatives, City Council members and employees (collectively, "City"), harmless from and against all liens and encumbrances of any nature whatsoever which may arise from this Agreement or in the exercise of Green Hills' rights hereunder, and from any and all claims, causes of action, liabilities, costs and expenses (including reasonable attorneys' fees), losses or damages arising from City's agreement to allow the placement of the concrete vaults on the rooftop of the Inspiration Slope Mausoleum, or any act or failure to act of Green Hills or Green Hills's agents, employees, construction workers, or invitees (collectively, "Green Hills"), except those arising out of the sole willful misconduct of the City.

**5. Waiver of Civil Code Section 1542.**

By releasing and forever discharging claims both known and unknown as provided herein, Green Hills expressly waives any and all rights under California Civil Code Section 1542 in connection with any Claim or Liability against the City. Civil Code Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Green Hills waives and relinquishes any and all rights and benefits which it may have under Section 1542 of the California Civil Code and any similar code provision or protection. Green Hills represents that it has performed a full and complete investigation of the facts pertaining to this Agreement. Nevertheless, Green Hills acknowledges and is aware that it may hereafter discover facts in addition to or different than those which it now knows or believes to be true with respect to potential claims, allegations, events and facts set forth herein, but it is Green Hill's intention hereby to fully and finally settle and release any and all matters, disputes, and differences, known or unknown, suspected or unsuspected, which may exist, as against the City, and in furtherance of this intention, the release herein given shall be and remain in effect as a full and complete general release notwithstanding discovery or existence of any such additional or different facts.

**6. Integration; Amendment.**

This Agreement contains all of the agreements of the parties and cannot be modified, terminated, or rescinded, in whole or in part, except by an instrument in writing signed by all parties hereto. Green Hills acknowledges that it was permitted to commence installation of the concrete vaults based on an oral understanding consistent with the terms hereof and which is memorialized in this letter agreement. Green Hills agrees that it cannot use the fact that it was allowed to install the vaults pursuant to this agreement against the City or the validity of the City's actions in any manner in any subsequent legal proceeding.

**7. Interpretation and Enforcement; Governing Law.**

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Court of the County of Los Angeles, State of California, or in any other appropriate court with jurisdiction in such county, and the parties agree to submit to the personal jurisdiction of such court.

**8. Prevailing Party Attorney Fees.**

In the event that either party shall commence any legal action or proceeding to enforce or interpret this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorneys' fees. The venue for any litigation shall be Los Angeles County. In the event of any asserted ambiguity in, or dispute regarding, the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty

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to exist or against the drafting party. This Agreement shall be governed by and interpreted under the laws of the State of California.

9. **Severability.**

If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Please carefully review the terms of this letter agreement and, if you find them acceptable, execute the enclosed copy. This agreement may be executed in counterparts and by fax signature. By signing below, Parties represent and warranty that they have authority to bind the Parties to this Agreement. Please return the executed letter agreement by fax and by enclosing an executed original in the envelope provided.

Sincerely,



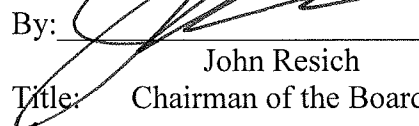
Doug Willmore  
City Manager

Cc: City Council  
City Clerk

I HAVE RECEIVED THE ORIGINAL OF THIS LETTER AGREEMENT AND UNDERSTAND THE FOREGOING TERMS AND CONDITIONS AND AGREE TO THEM. I HAVE THE AUTHORITY TO SIGN ON BEHALF OF AND BIND GREEN HILLS.

GREEN HILLS MEMORIAL PARK

Dated: June 28, 2016

By:   
John Resich  
Title: Chairman of the Board