

Recording requested by and
when recorded return to:

Macerich Northwestern Associates
Attention: Garrett Newland
11411 N Tatum Blvd
Phoenix, AZ 85028

Space above for recorder's use

**SAN RAMON CREEK CULVERT SEGMENT AGREEMENT
(A Portion of the Walnut Creek Project)**

This San Ramon Creek Culvert Segment Agreement ("Agreement") is entered into as of the Effective Date (as hereinafter defined), by and among the United States Army Corps of Engineers ("ACOE"), the Contra Costa County Flood Control and Water Conservation District ("CCCFCFCD"), the City of Walnut Creek, a California municipal corporation ("City"), and Macerich Northwestern Associates, a California general partnership ("Macerich"), each of which may be individually referred to herein as a "Party" and collectively referred to as the "Parties."

RECITALS

A. San Ramon Creek extends within City limits from south of Rudgear Road to its confluence with Walnut Creek, north of Mount Diablo Boulevard.

B. Following a series of floods in the 1940s and 1950s, Congress enacted the Flood Control Act of 1960 (P.L.86-645) (the "Act") authorizing ACOE to undertake the construction of certain flood control-related channel improvements to local waterways to accommodate a 100-year design storm (the "Walnut Creek Project"), including improvements associated with Walnut Creek and San Ramon Creek.

C. In 1971, as part of the Walnut Creek Project, ACOE constructed a reinforced concrete box culvert and covered concrete channel and appurtenances approximately one thousand (1000) feet in length (the "Segment") located along San Ramon Creek in certain real property now owned by Macerich, which is located in the Broadway Plaza retail shopping complex. The real property parcels that include the Segment are more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"). The Segment is shown on Exhibit B attached hereto and made a part hereof.

D. By letters dated March 26, 1963 and September 17, 1971, attached hereto as Exhibit C and Exhibit D, respectively, CCCFCFCD provided certain local interest assurances to the ACOE for the Walnut Creek Project (the "Local Assurances"). By letter dated January 26, 1972, attached hereto as Exhibit E, ACOE transferred the

Segment to CCCFCD for operation and maintenance. The Segment has been owned and operated by CCCFCD since that time, and the Segment now includes any work, repairs or alterations completed to the Effective Date.

E. In 1971, the owner of the Property conveyed an easement along the Segment in favor of CCCFCD (the "Easement"). The Easement, attached as Exhibit F, is for flood control and incidental purposes, and recites the rights and obligations of the parties. It was recorded February 26, 1971 in Book 6326, Page 867, and March 29, 1971 in Book 6347, Page 55, both of Official Records of Contra Costa County.

F. ACOE subsequently modified the Walnut Creek Project to include the San Ramon Bypass (the "Bypass") for the purpose, among others, of accommodating local requests that certain sections of San Ramon Creek and Walnut Creek remain as natural riparian corridors. As stated in the Record of Decision issued by the Corps on January 30, 1985, "The bypassed creek will remain in a natural state, retaining the vegetation that provides important social, environmental, and esthetic values to the city and county."

G. ACOE subsequently constructed the Bypass and transferred it to CCCFCD. Construction of the Bypass rendered the Segment unnecessary for the one hundred (100) year flood-control protection purposes it was originally intended to serve as part of the Walnut Creek Project. The Segment is therefore not a functional part of the Walnut Creek Project, but is surrounded by private and public culverts that are under the oversight of the City.

H. Prior to the Effective Date, the Segment, as part of the Walnut Creek Project, was subject to various laws, regulations, agreements and manuals relating to activities in and near the Segment, including, among other things, the following: operation, maintenance, use, entry, encroachment, repair, trespass, improvement, excavation, construction, alteration, inspection, access, and coordination of activities of local organizations operating public or private facilities connected with the Segment (collectively "Segment Activities").

I. The Segment continues to provide flood risk management benefits because it has the capacity to handle a certain amount to excess flood flows from the Bypass, as well as backwater should the Las Trampas Creek attain peak flows. The Segment also promotes local interests in preserving riparian habitat upstream and downstream from the Segment.

J. The Parties wish to sever the Segment from the Walnut Creek Project, to release the Segment from ACOE and CCCFCD oversight, and to transfer responsibility for the operation and maintenance of the Segment to Macerich with City oversight as of the Effective Date, in accordance with the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and approved, the Parties agree as follows:

1. The Parties agree that, as of the Effective Date:
 - (a) the Segment will not be designated as part of the Walnut Creek Project, and the ACOE is released from any further responsibility for the Segment;
 - (b) the Segment will not be subject to the Act; Section 14 of the River and Harbors Act of 1899, as amended, 33 U.S.C. 408; or Section 208.10 of Title 33, Code of Federal Regulations, "Local flood protection works; maintenance and operation of structures and facilities";
 - (c) the Segment will not be subject to the requirements of the Operation and Maintenance Manual for the Walnut Creek Project (the "O&M Manual");
 - (d) the Local Assurances will be of no further force or effect with respect to the operation or maintenance of the Segment for matters arising after the Effective Date;
 - (e) the CCCFCD will be released from, and will have no further responsibility, obligation or rights under: the Act; the O&M Manual; or the Easement; with respect to any Segment Activities arising after the Effective Date; and
 - (f) responsibility for the operation and maintenance of the Segment is transferred to Macerich with City oversight.

2. The Parties agree to effectuate this Agreement by undertaking the following actions:

- (a) Within ten (10) business days after the Effective Date, Macerich will execute and deliver to City for recording the Agreement for Maintenance of Box Culverts and License Agreement, dated as of the Effective Date, in substantially in the form attached hereto as Exhibit G (the "Culvert Maintenance Agreement");
- (b) Within ten (10) business days after the Effective Date, CCCFCD will vacate the Easement pursuant to Section 31 of the Contra Costa County Flood Control and Water Conservation District Act,

thereby releasing all the District's rights, title and interest in the Easement;

- (c) Within fifteen (15) business days after the Effective Date, CCCFCD will, at Macerich's sole cost and expense, execute and record the CCCFCD resolution ordering the vacation of the Easement by which the Easement was vacated (the "Resolution");
- (d) Within fifteen (15) business days after the Effective Date, City will execute the Culvert Maintenance Agreement, and upon full execution thereof, shall record promptly the Culvert Maintenance Agreement with the Contra Costa County Recorder's Office, at Macerich's sole cost and expense; and
- (e) Macerich will be responsible for the costs and expenses associated with the execution and recording of the Resolution and Culvert Maintenance Agreement; and
- (f) Within 180 business days after the Effective Date, ACOE will prepare and approve an addendum to the O&M Manual that reflects the severance of the Segment from the Walnut Creek Project;

3. Effective Date. The effective date of this Agreement shall be the date upon which the Agreement is signed by the last Party to sign the Agreement (the "Effective Date").

4. Authority of Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

5. Entire Agreement. Except as otherwise expressly provided herein, this Agreement constitutes the entire agreement between the Parties relating to the Segment. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. Any amendment to this Agreement shall be of no force or effect unless it is in writing and signed by each of the Parties.

6. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of each of the Parties.

7. Survival. All of the terms, provisions, representations, warranties and covenants of the Parties under this Agreement shall survive the assignment of this

Agreement and shall not merge in the deed or other documents following the delivery and recordation of said deed or other documents.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of California applicable to contracts entered into and performed in California.

9. Recording. This Agreement shall be recorded in the Contra Costa County Recorder's Office by Macerich at Macerich's sole cost and expense and shall constitute notice to all successors and assigns of the title to the Property of the obligations created hereunder.

10. No Third Party Beneficiaries. Nothing in this Agreement shall be construed as creating a right or benefit in any third party not a party to this Agreement.

11. Time is of the Essence. Time is of the essence of this Agreement and each of its provisions.

12. Counterparts. This Agreement may be executed in counterparts each of which shall be considered an original and all of which together shall constitute one and the same instrument.

13. Exhibits. This paragraph, which is provided for convenience only and which shall not be used to construe the meaning or intent of this Agreement, contains an informal list of the exhibits referred to above:

EXHIBIT A - Real Property Parcels That Include The Segment

EXHIBIT B - Relevant Segment of San Ramon Culvert

EXHIBIT C - Letter Dated March 26, 1963 (with copy of Memorandum Opinion of Assurances attached)

EXHIBIT D - Letter Dated September 17, 1971 (with Resolution No. 71-179 attached)

EXHIBIT E - Letter Dated January 26, 1972

EXHIBIT F - Easement For Flood Control and Incidental Purposes

EXHIBIT G - Form of Culvert Maintenance Agreement

EXHIBIT A-1 TO CULVERT MAINTENANCE AGREEMENT - LEGAL DESCRIPTION

EXHIBIT A-2 TO CULVERT MAINTENANCE AGREEMENT - SITE PLAN

CITY OF WALNUT CREEK,
a municipal corporation

By: _____
Kristina Lawson
Mayor

Date: _____

Suzie Martinez
City Clerk

Date: _____

Approved As To Form: Steven Mattas
City Attorney

Date: _____

[illegible]

(signatures continued next page)

MACERICH NORTHWESTERN ASSOCIATES,
a California general partnership

By: The Macerich Partnership, L.P.,
a Delaware limited partnership
Its: Managing General Partner

By: The Macerich Company,
a Maryland corporation
Its: General Partner

By: _____ Date: _____

Name: _____

Title: _____