

LICENSE AGREEMENT

This License Agreement ("Agreement") is effective December 1, 2019, ("Effective Date") by and between CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "District," and BRIDGE GRAYSON CREEK ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP, hereinafter called "Licensee." The District and the Licensee are sometimes referred to together as the "Parties" and individually as "Party."

Recitals

- A. The Licensee owns a housing development adjacent to the Property, located at 100 Chilpancingo Parkway, Pleasant Hill, California (the "Licensee Property"). The District is the owner of certain real property located adjacent to the Licensee Property along the west bank of Grayson Creek, in Pleasant Hill, and as shown in red in Exhibit "A" attached hereto (the "Property").
- B. The Licensee desires to obtain a license to enter and use the Property to maintain certain improvements, and for emergency access to the Licensee Property. The District is willing to grant Licensee a license to enter and use the Property for those purposes under the terms and conditions contained in this Agreement.

Agreement

Now, therefore, for good and valuable consideration, the receipt of which is hereby acknowledged by each Party, the Parties agree as follows:

1. **Grant of License.** Subject to the terms and conditions of this Agreement, District hereby grants to Licensee, for use by it and its officers, employees, agents, and contractors ("Licensee Parties"), a revocable nonexclusive license to enter, use, and maintain the Property for the purpose of maintaining (1) improvements described in those Civil Engineering plans entitled "Grayson Creek Apartments Site Improvement Plans" prepared by DK Associates, dated September 20, 2001, and as provided and approved as Flood Control Permit #624-00 ("Improvements"), and (2) a paved access road ("Access Road").
2. **District's Title.** Licensee hereby acknowledges District's fee title in and to the Property and agrees never to assail or to resist said title. Licensee agrees that it has not acquired, nor will it hereafter ever acquire, as a result this Agreement and the license granted hereunder, any rights or interest in the Property, nor does Licensee have nor will it obtain any right or claim to the use of the Property beyond those specifically granted in this Agreement. Construction of any improvements by Licensee on or about the Property shall not give rise to a license coupled with an interest.

3. **Term.** This Agreement commences on December 1, 2019, and it expires on November 30, 2023 (the “Initial Term”), unless this Agreement is terminated earlier as provided herein.
4. **Renewal Term.** Licensee, at its sole discretion, may extend the term of this Agreement for an additional five years beyond the end of the Initial Term, commencing on December 1, 2023, and terminating on November 30, 2028, (the “Renewal Term”) by providing written notice of renewal to the District on or before September 1, 2023 (the “Renewal Notice”).
5. **Fees.**
 - A. **Initial Term.** Within 30 days after the execution of this Agreement by both Parties, Licensee shall pay the District \$2,000 as the fee for the period from December 1, 2019, through November 30, 2020. For each December 1 through November 30 period (each, a “Year”) thereafter during the Initial Term, Licensee shall pay the District \$2,000 per Year, or portion thereof, that this Agreement remains effective during the Initial Term. Licensee shall make each of those payments to the District by the September 1 immediately preceding the Year, or portion thereof, for which payment is being made (e.g., by September 1, 2020, for the December 1, 2020, through November 30, 2021 Year).
 - B. **Renewal Term.** If Licensee elects to renew the term of this Agreement for an additional five years through November 30, 2028, Licensee shall pay the District \$3,000 per Year, or portion thereof, during the Renewal Term that this Agreement remains effective during the Renewal Term. Licensee shall make the first of those payment when it provides the District its Renewal Notice. Licensee shall pay each of the remaining payments to the District by the September 1 immediately preceding the Year, or portion thereof, for which payment is being made (e.g., by September 1, 2023, for the December 1, 2023, through November 30, 20254 Year).
6. **Non-Discrimination.** Licensee, as a part of the consideration hereof, agrees that: 1) no person on grounds, including, but not limited to, race, color, sex, or national origin shall be excluded from using, denied the benefits of, or be otherwise subjected to discrimination in the use of the Property. 2) Licensee shall furnish use of the Property, and the improvements thereon a fair, equal, and non-discriminatory basis to all users thereof. In the event of breach of any of the above non-discrimination covenant,
7. **Use of Property.** Licensee's use of Property shall be limited to maintaining and using the Access Road and the Improvements, in accordance with the terms of this Agreement. Licensee agrees that the Access Road may be used only by (a) emergency vehicles, which is limited to law enforcement vehicles, ambulances, and fire vehicles, (b) Licensee’s vehicles when

performing maintenance or other activities authorized by this Agreement, and (c) the District's and District permittees' and invitees' vehicles when for all purposes authorized by the District. Licensee's barricades of the Access Road shall accept both District's and Licensee's locks, so that both District and Licensee shall be able to independently unlock and open said barricade without the other's presence.

8. **Suspension or Limitation of Use.** District, in its sole discretion, may temporarily suspend or limit Licensee's use of the Access Road or Improvements, without compensation to Licensee, for a reasonable amount of time, as so determined solely by the District, for the protection of public safety or for the construction, installation, operation, maintenance, or repair of facilities on or near the Property, or other property near the Property. Should such suspension or limitation be necessary, District shall provide Licensee thirty (30) days' prior written notice. However, in the event that the District exercises its rights under this Section 8 due to circumstances that, in the District's opinion, constitute an emergency, the District will endeavor to provide notice suspension or limitation hereunder as soon as practicable under the circumstances, which may result in notice being given after the suspension or limitation has begun. During any period of suspension or limitation hereunder, the District will attempt to, but is not obligated to, provide continued access for emergency vehicles through the Property as described in Section 7. Use of Property.
9. **Revocation and Termination of License.** The District may terminate this Agreement at any time upon 30 days' advance written notice to Licensee. Licensee may terminate this Agreement upon 90 days' advance written notice to the District. Licensee shall not be entitled to any compensation upon the termination of the license by the District or by the Licensee.
10. **Permits and Approvals.**
 - A. **Permits Required.** Licensee shall be responsible for obtaining any required permits or approvals from any agency having jurisdiction over Licensee's activities on the Property under this Agreement. This Agreement does not constitute governmental approval by Contra Costa County Flood Control District any construction, reconstruction, removal, or other work within the Property, other than maintenance of the Access Road and the Improvements under the terms of this Agreement. Neither Licensee, nor Licensee's agents, employees, contractors, or sub-contractors shall perform any such construction, reconstruction, removal, or other work within the Property without first obtaining District's written approval of said work in the form of an approved Flood Control Permit ("Permit"). To seek a Permit from the District, at a minimum, Licensee shall furnish to District a complete description and three (3) sets of plans, drawings, calculations, or other documents necessary to support the proposed work, and Licensee shall comply with

all the requirements and conditions for the issuance of a Permit, including the submittal of cash deposits and/or cash bonds. In performing work under a Permit approved by District, Licensee shall not deviate in any material manner from the plans approved by District without first obtaining additional written approval from District. Licensee shall be responsible for all the expenses of the District related to the Permit. To the extent that any term of the Permit conflicts with a similar term in this Agreement, the term of the Permit shall prevail as it applies to any work authorized by the Permit.

- B. Routine and Emergency Maintenance. Licensee shall not be required to obtain District's prior written approval, or any Permit, when Licensee, its employees, contractors, or agents are performing routine maintenance of, or emergency repairs to, the Access Road or the Improvements. As used in this Section, the term "Routine Maintenance" refers to recurring and usual work that (a) is required to maintain the Access Road or Improvements for their intended purposes, and (b) does not alter the design or footprint of the Access Road or Improvements, and (c) in the case of replacing materials at the end of their useful life, does not result in a betterment of the Access Road or Improvements. As used in this Section, the term "Emergency Repairs" refers to maintenance of, or repairs to, the Access Road or Improvements that (a) is immediately necessary to protect the safety of persons or property from threatened or actual harm, injury, death, or destruction, and (b) does not alter the design or footprint of the Access Road or Improvements, and (c) does not result in a betterment of the Access Road or Improvements. Licensee shall notify the District at least ten (10) days before performing any Routine Maintenance on the Property. When making Emergency Repairs, Licensee shall provide the District as much notice as practicable under the circumstances, but in no event shall such notice be provided more than 24 hours after the Licensee begins the Emergency Repairs. When performing Routine Maintenance or making Emergency Repairs, the Licensee shall perform that work in such a manner that District shall, at all times, be able to use and gain access to its facilities and Property.
- C. Third-Party Work. The District reserves the right to allow any Third-Party to access the Property to perform any work authorized under a District easement, license, or flood control permit, provided that the Third-Party does not unreasonably interfere with Licensee's use of the Property under this Agreement. For the purposes of this Agreement, a "Third-Party" is any person other than the Licensee, Licensee Parties, or the District or Contra Costa County, or their officers, employees, contractors, agents, or invitees.
- D. Inspection. All work performed by Licensee under this Section shall be subject to inspection by District and the submittal of as-built drawings.

11. **Nonexclusive Rights of Use.** Licensee's right to use the Property under this Agreement is revocable and nonexclusive. The District reserves the right to issue easements, licenses, and permits to Third Parties to use the Property for other purposes so long as such use will not unreasonably interfere with the use of the Property by the Licensee under this Agreement.

12. **Improvements.**
 - A. **Removal for Safety Reasons.** The District shall have the right at all times to require Licensee, at its sole cost and expense, to remove any and all Improvements and/or the Access Road installed or constructed by Licensee on the Property within 10 days after the District provides written notice to Licensee ("Removal Notice") that the District, in its sole discretion, determines that the Improvements and/or Access Road pose a health or safety hazard to the public or others that use the Access Road.

 - B. **Removal Upon Expiration or Termination.** Upon the termination or expiration of this Agreement, the Licensee shall leave the Access Road and all Improvements on the Property, unless the District provides the Licensee written notice to remove the Access Road and/or Improvements (also a "Removal Notice"). Licensee, at its sole cost and expense, shall remove the Access Road and/or Improvements designated in the Removal Notice within 30 days after receiving the notice.

 - C. **District Removal and Reimbursement.** If, after receiving a Removal Notice, Licensee fails to remove the Improvements and/or Access Road within the time required under Sections 12.A. and 12.B., the District shall have the right to remove the Improvements and/or Access Road designated in the Removal Notice, and Licensee shall be required to reimburse the District for all of the District's costs related to removing the Access Road and/or Improvements within five (5) days after receipt of District's written request for said reimbursement.

 - D. **No Compensation.** Licensee shall not be entitled to any compensation for the Access Road and/or any Improvements left on the Property at the expiration or termination of this Agreement, or where the Access Road and/or Improvements are required to be removed.

 - E. **Survival.** The requirements of this Section 12 shall survive the termination or expiration of this Agreement.

13. **Security.** The District shall have no responsibility for the safety and security of Licensee's Improvements or for Licensee Parties' use of the Property.

14. **Utilities.** Licensee shall not install any utilities on the Property without District's prior written consent. Upon District's prior written consent, Licensee shall install all utilities so approved at Licensee's sole expense, and Licensee shall pay, on Licensee's own account, all charges for said utilities used or consumed on the Property under this Agreement. Upon the expiration, revocation, or other termination of this Agreement, Licensee shall either, at District's sole discretion, remove all or portions of those utilities installed by Licensee on the Property, or leave them in place. The requirements of this Section 14 shall survive the expiration or termination of this Agreement.
15. **Existing Facilities.** It is understood and agreed that the District has leases and/or licenses with Third-Parties for all or a portion of the Property. The holders of the leases and/or licenses described above have the right to enter on the Property and maintain their facilities, and the District shall not be liable to the Licensee for any damage to Licensee's Improvements or the Access Road resulting from such maintenance, or resulting from any activities by Third Parties.
16. **Maintenance.** Licensee, at Licensee's sole expense, shall maintain the Property, including the Access Road and the Improvements, in a clean, safe, and presentable condition, free from waste, litter, and other items. Licensee's maintenance of the Access Road and Improvements shall include, but not be limited to, the provisions in Sections 16.A. through 16.F. If Licensee fails to so maintain the Access Road and Improvements, then, after thirty (30) days' prior written notice specifying the needed work, District may perform or hire the necessary work at the sole expense of Licensee, which expense Licensee agrees to reimburse in full to the District within five (5) days after receiving a demand for reimbursement from the District. Notwithstanding the foregoing, Licensee shall not be responsible for maintenance of the Access Road or Improvements, or any other portion of the Property, after the termination of this Agreement.
- A. **Signs.** Licensee shall obtain written permission from the District before installing information or warning signs on the Property.
- B. **Trees and Vegetation.** Licensee shall obtain written approval from the District before installing new landscaping on the Property. Licensee shall maintain all landscaping, trees, and vegetation it installs on the Property.
- C. **Litter.** Licensee shall pick up and remove all litter on the Property.
- D. **Maintenance of Access Road and Improvements.** Licensee shall maintain all paving on the Access Road, and shall maintain all Improvements installed by Licensee. Notwithstanding the foregoing, the District will maintain the barrier gate at the entrance to the Property from Chilpancingo Parkway. Licensee shall immediately repair any damage

to the District's facilities caused by Licensee or by the construction or maintenance of Licensee's Improvements.

E. Fencing. Licensee shall maintain all fencing, gates, and barricades (other than the barrier gate maintained by the District under Section 16.D.) that Licensee installs on the Property.

F. Graffiti. Licensee shall, at its expense, promptly clean, repaint, or remove any graffiti placed on the Access Road or on Improvements on the Property.

17. Damage. The rights granted herein are surface rights only and no excavation shall be allowed. It is the responsibility of Licensee to contact easement, lease, and license holders to determine that the Property is able to support any vehicle brought onto it by Licensee Parties without damage to subsurface or surface facilities in the Property. Licensee shall repair all damage and return the Property to a neat and safe condition satisfactory to District and such other users. Licensee shall be responsible for the removal, relocation, replacement, protection, and reconstruction of the Access Road or any of the Improvements when District finds such work necessary for the maintenance, construction, repair, reconstruction, or alteration of District's property, including but not limited to, erosion of the creek bank or sliding of the graded slopes.

18. No Waste. Licensee, its agents, contractors, employees, guests, and invitees shall not cause any waste, damage, or destruction to the Property. Upon termination or expiration of this Agreement, Licensee shall, at its sole expense, repair any damage or destruction caused by Licensee that occurred during Licensee's use of the Property and shall restore the Property to its original condition, reasonable wear and tear and construction of the Improvements described herein excepted.

19. Pollution. Licensee, at its sole expense, shall comply with all applicable laws, regulations rules, with respect to the use of the Property, regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality; and Licensee shall furnish satisfactory evidence of such compliance upon request of District.

No hazardous materials shall be handled at any time upon the Property. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the Property due to Licensee's use and occupancy of the Property, Licensee, at its sole expense, shall clean the Property and all properties affected thereby, whether owned or controlled by the District or any third parties. All cleaning of District-owned or occupied properties shall be completed to the satisfaction of District and any governmental body or

agency having jurisdiction over the properties or the cleanup, including but not limited to the regional water quality control board.

To the extent permitted by law, Licensee shall indemnify, hold harmless, and defend the District, Contra Costa County, their officers, employees, contractors, and agents, and all other persons having a license or an easement in the Property (collectively, "Indemnitees") against all liability, cost, and expense (including, without limitation, any fines, penalties, judgments, litigation costs, and attorneys' fees) incurred by any Indemnitees (a) as a result of Licensee's breach of its obligations under this section, or (b) as a result of any such discharge, leakage, spillage, emission or pollution, regardless of whether such liability, cost or expense arises during or after the term of this License, unless such liability, cost or expense is proximately caused solely by the active negligence of the District.

Licensee shall pay all amounts due any Indemnitees under this section within ten (10) days after any such amounts become due. The requirements of this Section 19 shall survive the expiration or termination of this Agreement.

20. **District's Use of Herbicides.** Licensee hereby acknowledges and understands that District may, at any time, use chemical herbicides on the Property and on or near the Access Road and Licensee's Improvements, as described herein, and Licensee shall not be held liable to Contra Costa County or to District for said use by District. Licensee agrees to allow such use, without disruption or challenge, on or near the Property, the Access Road, and Licensee's Improvements thereon, as described herein. Licensee hereby knowingly waives its right to make any claim for liability against District and Contra Costa County, and their officers, employees, agents, and representatives for any damage resulting from their use of chemical herbicides under this Section 20; and, as to those liabilities, Licensee hereby expressly waives all rights provided by section 1542 of the California Civil Code, which provides as follows:

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

21. **Hold Harmless.** Licensee shall defend, indemnify, save, and keep harmless the Indemnitees from and against all liabilities, judgments, costs, and expenses which may in any way accrue against any Indemnitees as a result the granting of the license under this Agreement, or arising from or in connection with the Licensee Parties' occupancy and use of the Access Road, Improvements, or Property under the terms of this Agreement, save and except claims or litigation arising from the sole negligence or sole willful

misconduct of the District. The requirements of this Section 21 shall survive the expiration or termination of this Agreement.

22. **Insurance.** Licensee, at its sole cost and expense, shall obtain and maintain during term of this Agreement, comprehensive liability insurance with a minimum combined single-limit coverage of \$1,000,000 for all claims or losses due to bodily injury, sickness or disease or death to any person, or damage to property, including loss of use thereof arising out of each accident or occurrence, and to name **Contra Costa County Flood Control and Water Conservation District, Contra Costa County, and their officers, agents, and employees as additional insured** thereunder. Said coverage shall provide for a **thirty (30) days' advance** written notice to the District prior to any cancellation or lapse of said policy. The Licensee shall provide the District evidence of such coverage prior to the Licensee's execution of this Agreement, and the Licensee shall immediately provide the District any renewals and extensions of said policy during the term of this Agreement. The District may terminate this Agreement immediately due to any lapse in coverage.
23. **Notices.** All notices given under this Agreement must be given by First Class U.S. Mail, postage prepaid, or by overnight carrier, marked for delivery to the applicable address listed below. When so given, such notice shall be effective five (5) days after the date of the mailing of the same if given by U.S. Mail, or the next business day after the notice is deposited for delivery, if given by overnight carrier.

The address of the District is:

Contra Costa County
Public Works Department
Real Property Division
255 Glacier Drive
Martinez, California 94553
925/957-2467

And the address of Licensee is:

Bridge Grayson Creek Associates
c/o BRIDGE Housing Corporation
600 California Street, Suite 900
San Francisco, CA 94108-2706
Attn: Director of Asset Management
415/989-1111

24. **Non-Waiver of Breaches.** The District's failure to insist, in any one or more instances, upon strict performance of any of the terms or conditions of this License shall not be considered as a waiver of any subsequent breach as

to the same or any other term or condition, but the same shall continue and remain in full force and effect. No waiver of any of the provisions of this License shall be effective unless in writing and executed by District.

25. **Assignment and Subletting.** Licensee shall not assign or sublet any of Licensee's rights and obligations under this Agreement.
26. **No Warranties.** The District does not warrant or represent that the Property is safe, healthful, or suitable for the purposes for which it is permitted to be occupied and used under the terms of this Agreement.
27. **Severability.** If any term, covenant, or provision of this Agreement, which does not materially affect the consideration of this Agreement, is held to be invalid, illegal, or unenforceable in any respect, the validity of the remainder of this Agreement shall not be affected thereby.
28. **Controlling Law.** This Agreement shall be construed in accordance with the laws of the State of California.
29. **Entire Agreement; No Third-Party Beneficiaries.** This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. No alteration or variation of this Agreement shall be valid or binding unless made in writing and signed by the parties hereto. Except for Licensee's defense and indemnification of Contra Costa County under this Agreement, and except for Licensee's release of Contra Costa County under this Agreement, nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties and their successors and assigns, any rights or remedies by reason of this Agreement.

[Signatures on next page.]

**CONTRA COSTA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

LICENSEE

APPROVED:

By _____
Brian M. Balbas
Chief Engineer

Date: _____
(Date of Board Approval)

By _____

Date _____
(Date signed by Licensee)

RECOMMENDED FOR APPROVAL:

By _____
Angela Bell
Associate Real Property Agent

By _____
Karen A. Laws
Principal Real Property Agent

AB:sn:dw
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EXHIBIT "A"

