

**LICENSE AGREEMENT BETWEEN  
DISCOVERY BUILDERS, INC. AND  
CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION  
DISTRICT REGARDING TEMPORARY ACCESS**

THIS LICENSE AGREEMENT (this “**Agreement**”) is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the “**Effective Date**”), by and between **DISCOVERY BUILDERS, INC.**, a California corporation (“**DBI**”), and **CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**, a flood control district organized under the laws of the State of California (“**District**”). DBI and the District are sometimes collectively referred to herein as the “**Parties**,” and individually as a “**Party**.”

**RECITALS**

A. DBI owns that certain real property located in an unincorporated area of Contra Costa County, California, as generally depicted on *Exhibit A* attached hereto (“**DBI’s- Property**”).

B. The District owns and maintains that certain real property generally located to the south and east of DBI’s Property, generally identified as Pacheco and Walnut Creeks as shown on *Exhibit A* attached hereto (“**District’s Property**”). An existing dirt access road is located on DBI’s Property, as depicted in *Exhibit A* and described in *Exhibit B* attached hereto (“**Access Road**”). The District desires to use the Access Road for access and construction purposes in connection with the District’s Lower Walnut Creek Restoration Project (“**Project**”), and for other District purposes.

C. To provide the District continued access to District’s Property until such time as a permanent access easement is recorded, as further described herein, DBI is willing to grant a license to the District (including its employees, representatives, consultants, and contractors) for the right of ingress to and egress from the District’s Property over, upon, and across the Access Road. The District and DBI intend for this license to be replaced with a permanent easement upon, in, over, and across the Access Road (“**Future Access Easement**”) when DBI subdivides the DBI Property. DBI intends that the Future Access Easement will be offered for dedication on the final map DBI will file for subdivision of the DBI Property (“**Offer of Dedication**”); or, alternatively if DBI does not pursue the filing of a final map, DBI may offer the Future Access Easement for dedication to the District by separate instrument, or DBI may agree to convey the easement to the District, each under terms acceptable to both Parties (each, also an “**Offer of Dedication**” for purposes of this Agreement).

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, Parties hereby agree as follows:

1. **Grant of License.** Subject to the terms of this Agreement, DBI hereby grants to the District, for use by the District, its directors, officers, employees, contractors, subcontractors, consultants, representatives, agents (“**District’s Representatives**”) a non-possessory, non-exclusive right of access over, upon, and across the Access Road, to access District’s Property with equipment, personnel, and vehicles, as and at times determined by the District, and for no other purposes.

2. **Term.** The term of this Agreement shall commence on the Effective Date. This Agreement shall automatically terminate on the date on which the District records its acceptance of a Future Access Easement following an Offer of Dedication. This Agreement also may be terminated upon the mutual agreement of both Parties. Termination may also occur if The District is in material breach of its obligations under this Agreement and has not cured such material breach within forty-five (45) days after being provided written notice of such material breach. However, for any material breach of this Agreement that cannot reasonably be cured within 45 days following written notice from DBI, this Agreement may not be terminated if the District commences to cure such material breach within said 45-day period and continues thereafter to take reasonable steps necessary to cure the material breach until said breach is cured.

3. **Condition of DBI's Property.** The District acknowledges that DBI makes no warranties of any kind concerning the physical condition of DBI's Property and/or the Access Road. The District shall be responsible for restoring any damage or correcting any unsightly condition caused by the District's activities on or around the Access Road, or to any landscaping or structures thereon, or to any other portion of DBI's Property which is damaged as a result of the District's access thereto. Notwithstanding anything to the contrary herein, the District shall not be responsible for repairing any damage to, or restoring any conditions on or around, the Access Road to the extent that damage or condition is caused by DBI or any third parties unrelated to the District.

4. **Indemnity Regarding District's Activities.** The District assumes all risk of loss arising from its use of the Access Road under this Agreement, except to the extent any loss is attributable to the active negligence or willful misconduct of DBI or persons under DBI's direction or control. The District shall indemnify, defend (with counsel reasonably acceptable to DBI), protect, and save DBI harmless from and against any and all demands, liabilities, losses, damages, expenses, causes of action, suits, claims, and judgments, including, but not limited to, reasonable attorneys' fees arising or relating to personal injuries or property damages, (collectively, "**Liabilities**") to the extent such Liabilities arise from the negligence or willful misconduct of any District Representatives while exercising the District's rights or satisfying the District's obligations under this Agreement. The provisions of this Section 4 shall survive the termination of this Agreement.

5. **Compliance.** The District shall at all times comply with all applicable ordinances, rules, regulations, codes, statutes, and requirements of all federal, state, county, and municipal governmental bodies or their subdivisions respecting the use of DBI's Property and/or the Access Road. The District further covenants and agrees that it will do no act, nor permit any act to be done, which shall cause a lien or encumbrance of any kind to be filed or recorded against DBI's Property and/or the Access Road, or any part thereof, and that the District will, within ten (10) days, at its sole expense, do all things necessary to remove any such lien or encumbrance placed against said premises in connection with the District's use thereof, and shall hold DBI free and harmless from costs or damages resulting therefrom.

6. **Insurance.** At all times during the term of this Agreement the District and District's contractors performing Project-related work, or performing any other work requiring use of the Access Road, shall maintain general liability insurance insuring against liability for injury to persons and/or property and death of any person or persons occurring in, on, or about DBI's Property and/or the Access Road or in any way related to the exercise of the District's rights and obligations under this Agreement. The liability limit under such insurance shall not be less than (i) One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the general aggregate, and

(ii) all employee's compensation insurance required under applicable Worker's Compensation Acts. Such insurance shall name DBI as an additional insured, shall be primary to any insurance carried by DBI and shall contain a waiver of subrogation clause. The District shall provide a certificate of insurance (with appropriate endorsements) evidencing compliance with this insurance provision within three (3) business days after the full execution of this Agreement and prior to entry onto DBI's Property by or on behalf of the District under this Agreement.

The District shall have the right to self-insure for any or all insurance required under this section. In the event that the District does self-insure, the District shall provide written evidence of such self-insurance to DBI, and shall include DBI as an additional insured under such self-insurance coverage.

7. **Notices.** Except in cases of emergency, all notices required or permitted under the terms of this Agreement shall be directed to:

If to the District:       Contra Costa County Flood Control and Water Conservation District  
                                  Attn: Real Property Division  
                                  255 Glacier Drive  
                                  Martinez, CA 94553  
                                  Email: angela.bell@pw.cccounty.us

If to DBI:                   Discovery Builders, Inc.  
                                  Attn: David Young, Esq.  
                                  4021 Port Chicago Highway  
                                  Concord, California 94520  
                                  Email: dyoung@discoverybuilders.com

8. **Governing Law.** This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California, without regard to its choice of law provisions.

9. **Successors and Assigns.** The provisions of this Agreement are intended to and will run with the land, and, until their termination in accordance with the terms of this Agreement, will bind, be a charge upon, and inure to the benefit of DBI and the District, their respective successors and assigns.

10. **Attorneys' Fees.** If any legal action, arbitration or other proceeding is brought involving a dispute between the parties or arising out of this Agreement, each Party will bear its own attorney's fees.

11. **Drafting.** This Agreement shall be construed as jointly drafted by the parties hereto and no construction of any term hereof shall be weighted as against any party as drafter.

12. **Severability.** If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the full extent permitted by law, provided the material provisions of this Agreement can be determined and effectuated.

13. **Counterparts.** This Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

14. **Other Documents.** Each party agrees to sign any additional documents that may be reasonably required to effectuate the purpose of this Agreement.

15. **Authority; Execution.** The District represents that the person executing this Agreement on behalf of the District is duly authorized to do so. DBI represents that the person executing this Agreement on behalf of DBI is duly authorized to do so.

16. **Prior Agreements.** This Agreement supersedes all previous oral and written agreements between and representations by or on behalf of the parties and constitutes the entire agreement of the parties with respect to the subject matter hereof. This Agreement may not be amended except by a written agreement executed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**DBI:**

**DISCOVERY BUILDERS, INC.,**  
a California corporation

By: \_\_\_\_\_  
Name: Louis Parsons  
Its: President

**Approved as to form:**

\_\_\_\_\_

Exhibits:  
Exhibit A – Depiction of Access Road  
Exhibit B – Legal Description

**DISTRICT:**

**CONTRA COSTA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT,**  
a flood control district existing under the  
laws of the State of California

By: \_\_\_\_\_  
Brian M. Balbas  
Chief Engineer

Recommended for Approval:

By: \_\_\_\_\_  
Jessica L. Dillingham  
Principal Real Property Agent

**Approved as to form:**  
Sharon L. Anderson, County Counsel

By: \_\_\_\_\_  
Stephen Siptroth  
Deputy County Counsel

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**(Civil Code §1189)**

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.

**STATE OF CALIFORNIA** )

**COUNTY OF \_\_\_\_\_** )

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_,  
a Notary Public, personally appeared \_\_\_\_\_

\_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**(Civil Code §1189)**

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.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_,  
a Notary Public, personally appeared \_\_\_\_\_

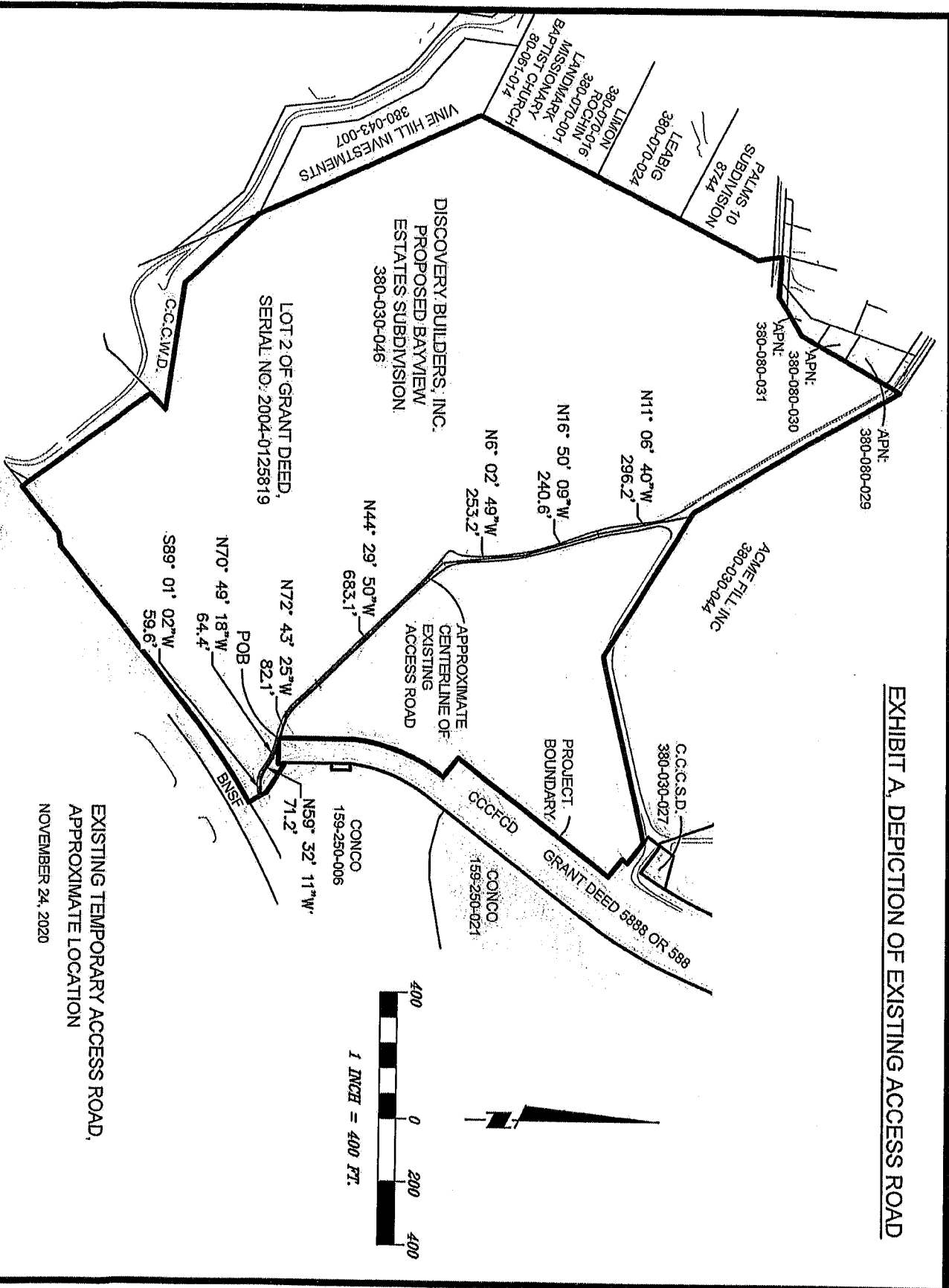
\_\_\_\_\_ ,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY

**EXHIBIT A. DEPICTION OF EXISTING ACCESS ROAD**



EXISTING TEMPORARY ACCESS ROAD,  
 APPROXIMATE LOCATION  
 NOVEMBER 24, 2020

**EXHIBIT B**

**LEGAL DESCRIPTION FOR THE TEMPORARY ACCESS LICENSE AGREEMENT  
BETWEEN DISCOVERY BUILDERS INC. AND CONTRA COSTA COUNTY FLOOD  
CONTROL AND WATER CONSERVATION DISTRICT**

A strip of land 20' in width, in an unincorporated area of Contra Costa County, State of California, with its centerline described as follows:

The Point of Beginning being 55' northerly of the most southwesterly corner of that land deeded by Acme Fill Corporation to Contra Costa County Flood Control and Water Conservation District ("District"), which deed was recorded on June 3, 1969 in Book 5888 Page 588 of Official Records of said County, thence along the following courses sequentially for the northerly segment of said Strip:

- 1) N72°43'25"W, 82.1'
- 2) N44°29'50"W, 683.1'
- 3) N06°02'49"W, 253.2'
- 4) N16°50'09"W, 240.6'
- 5) N11°06'40"W, 296.2'

To a point on a northeasterly line of Lot 2 of that Lot Line Adjustment #LL03-83 approved by said County and recorded under Serial Number 2004-125819.

**END OF LEGAL DESCRIPTION**

  
*[Handwritten Signature]*  
12/2/20