

**MAINTENANCE AGREEMENT
BY AND BETWEEN 3483 GOLDEN GATE WAY, LLC AND THE
CONTRA COSTA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT FOR LAFAYETTE CREEK**

THIS MAINTENANCE AGREEMENT ("Agreement") is entered into as of the _____ day of _____, 2023, ("Effective Date") by and between 3483 Golden Gate Way, LLC, a limited liability company (herein called the "Developer"), and the Contra Costa County Flood Control and Water Conservation District, a flood control district formed and existing under the laws of the State of California (herein called the "District"). The Developer and the District are sometimes referred to herein together as the "Parties," and each as a "Party."

RECITALS

WHEREAS, the Developer owns fee title to two parcels commonly identified as Assessor's Parcel Nos: 243-232-027 & 243-232-028 (the "Developer Parcels"), within which is a section of an existing concrete channel known as Lafayette Creek ("Creek"), which is depicted in Exhibit A (Civil Plans), attached hereto and incorporated herein by this reference; and

WHEREAS, the District is responsible for maintenance of flow of the Creek within the Developer Parcels; and

WHEREAS, the Developer is responsible for the construction and maintenance of improvements for the Developer's Golden Gate Way Multifamily project, reviewed by the District under District Encroachment Permit 651-21, a copy of which is attached hereto as Exhibit B (Encroachment Permit), located within the Developer Parcels and as depicted on Exhibit A; and

WHEREAS, the District has easements, copies of which are attached hereto as Exhibit C (Easements) and incorporated herein by this reference, on the Developer Parcels, allowing the District to perform maintenance and to access the Creek (the "District Easement"); and

WHEREAS, the Parties wish to clearly describe their respective maintenance obligations within the District's Easement on the Developer Parcels.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions included herein, the Parties mutually agree as follow:

1. **Term; Termination.** The term of this Agreement begins on the Effective Date and shall continue until terminated as provided herein. This Agreement may be terminated at any time by mutual written consent of the Parties.
2. **Parties' Maintenance Responsibilities.**
 - A. **Developer's Obligations.** The Developer, at its sole cost and expense, shall perform the following within the District Easement on, in, and adjacent to the Developer Parcels:
 - i. Maintain all landscaping, vegetation, irrigation facilities, monuments, and other appurtenant structures to the Developer's Gold Gate Way Multifamily project.
 - ii. Repair or replace any landscaping, vegetation, irrigation facilities, monuments, and other appurtenant structures to the Developer's Golden Gate Way Multifamily project that are damaged or destroyed as a result of the District's maintenance activities under Section 2(B) except to the extent caused by the negligence on the part of the District or its employees.
 - iii. Upon District's request, the Developer shall remove or relocate improvements that interfere with District's access to the Creek.
 - B. **District's Obligations.** Except to the extent that Section 2(A) provides otherwise, the District, at its sole cost and expense, shall perform the following within the District Easement on the Developer Parcels:
 - i. The District shall maintain the Creek within the Developer Parcels.
 - ii. The District shall remove obstructions that block or impede water flow within the Creek.
 - iii. District reserves the right to remove or temporarily relocate improvements that interfere with District's access to the Creek. District will take all reasonable measures to prevent any damages to the landscape and or hardscape within District Easement on the Developer Parcels.
3. **Indemnification.**
 - A. **Developer's Indemnity Obligation.** To the extent permitted by law,

Developer shall indemnify, defend, and hold harmless the District, its officers, employees, agents, and contractors (collectively, the "District Parties") from and against all claims, demands, damages, liabilities, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, (collectively, "Liabilities") to the extent that the Liabilities arise from, are connected with, or are related to, the negligent or willful acts, errors, or omissions of the Developer, its officer, employees, agents, or contractors (collectively, the "Developer Parties") in the performance of the Developer's obligations under this Agreement, provided however, that the Developer is not required to indemnify the District Parties for the proportion of liability attributable to the negligence or willful acts, errors, or omissions of the District Parties.

- B. **District's Indemnity Obligation.** To the extent permitted by law, District shall indemnify, defend, and hold harmless the Developer Parties from and against all Liabilities to the extent that the Liabilities arise from, are connected with, or are related to, the negligent or willful acts, errors, or omissions of any of the District Parties in the performance of the District's obligations under this Agreement, provided however, that the District is not required to indemnify the Developer Parties for the proportion of liability attributable to the negligence or willful acts, errors, or omissions of the Developer Parties.
- C. **Survival.** The Parties' obligations under this Section 3 shall survive the expiration or termination of this Agreement.

- 4. **Insurance.** Each Party shall maintain liability insurance applicable to their obligations under this Agreement, and each Party agrees to cause any contractor hired by the Party to perform work related to this Agreement to indemnify the other Party and maintain liability insurance applicable to the work and require the contractor include the other Party, its officials, officers, employees and agents as additional insureds. Each Party shall maintain workers' compensation insurance for its own employees. A Party may satisfy its insurance obligations under this Agreement through one or more policies of self-insurance.
- 5. **Notices.** Any notice, demand, request, consent, approval, or communications that either Party desires or is required to give to the other Party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice shall be addressed to the other Party at the address set forth herein below. A Party may change its address by notifying the other Party of the change of address. Notice shall be deemed given immediately if delivered in person, or on the fifth day after mailing if delivered by first class mail.

If to Developer: 3483 Golden Gate Way, LLC
Attention: John Protopappas
155 Grand Ave Suite 950
Oakland, CA 94612

If to District: Contra Costa County Flood Control &
Water Conservation District
Chief Engineer
255 Glacier Drive
Martinez, CA 94553

6. **Assignment.** This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Parties hereto. This Agreement may not be assigned by either Party unless the assignment is approved in writing in advance by the other Party.
7. **Entirety of Agreement.** This Agreement constitutes the entire agreement between the Parties regarding the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof.
8. **Modification.** This Agreement may not be modified or amended except in a writing signed by both Parties hereto.
9. **Construction.** The section headings and captions of this Agreement are, and the arrangement of this Agreement is, for the sole convenience of the Parties to this Agreement. The section headings, captions, and arrangement of this Agreement do not in any way affect, limit, amplify, or modify the terms and provisions of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if all Parties have prepared it. The Parties to this Agreement and their attorneys have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement. The recitals of this Agreement are, and shall be enforceable as, a part of this Agreement.
10. **No Third-Party Beneficiaries.** 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.
11. **Waiver.** A waiver of breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision of the Agreement. A waiver of breach of any covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in

this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party.

12. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
13. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

[Remainder of page intentionally left blank – signatures on next page.]

IN WITNESS WHEREOF, the Developer and District have executed this Agreement as of the Effective Date.

3483 GOLDEN GATE WAY, LLC

CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By:  _____
John Protopappas - Managing Partner

By: _____
Brian Balbas

APPROVED AS TO FORM
Mary Ann McNett Mason, County Counsel

By: _____
Deputy County Counsel
Name: _____

- Exhibits:
- Exhibit A Civil Plans
 - Exhibit B Encroachment Permit
 - Exhibit C Easements

\\pw-data\grpdata\fldctl\CurDev\CITIES\Lafayette\FCP 651-21, Golden Gate\2023-0117 - FCD Lafayette Maintenance Agreement (Final) - Golden Gate Way.docx

CALIFORNIA 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 Alameda }

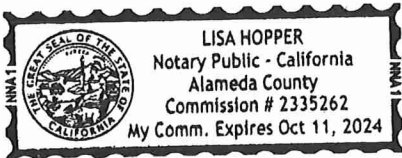
On January 23, 2023 before me, Lisa Hopper
Date Here Insert Name and Title of the Officer

personally appeared John Protopappas
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/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.



Place Notary Seal and/or Stamp Above

Signature [Handwritten Signature]
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Maintenance Agreement

Document Date: - Number of Pages: 6

Signer(s) Other Than Named Above: -

Capacity(ies) Claimed by Signer(s)

Signer's Name: John Protopappas

- Corporate Officer – Title(s): _____
- Partner – Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator

Other: Managing Partner

Signer is Representing: 3483 Golden Gate Way, LLC

Signer's Name: _____

- Corporate Officer – Title(s): _____
- Partner – Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

*by & between 3483 Golden Gate Way
Contra Costa County Flood Control
Water Conservation district for
Lafayette Creek*