

Recorded at the request of and after
recorded return to:

Marsh Drive Holdings, LLC
5000 Marsh Drive
Concord, CA 94520

Mail Tax Statement to:
Contra Costa County Flood Control and
Water Conservation District
Attn: Real Estate Division
255 Glacier Drive
Martinez, CA 94553

A.P.N. No.: 125-210-XXX

GRANT OF EASEMENT

For good and valuable consideration, including but not limited to the agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a flood control district, organized under the laws of the State of California, (hereinafter "DISTRICT") hereby grants to MARSH DRIVE HOLDINGS, LLC, a California limited liability company (hereinafter, referred to as "GRANTEE"), a nonexclusive right to a perpetual easement and right of way for ingress and egress, and for constructing, reconstructing, removing, replacing, repairing, upgrading, maintaining, operating, and using an approximately 4-inch diameter building area underdrain outlet pipe and concrete outfall structure and appurtenances thereto (the "Drain Facilities"), for the purpose of draining storm water from GRANTEE's adjacent property located at 5000 Marsh Drive, in the Concord area, commonly identified as Assessor's Parcel No. 159-140-055, ("Grantee Property") and for no other purposes whatsoever, along, in, over and across all of the hereinafter described parcel of land situated in the County of Contra Costa, State of California, described as follows:

FOR DESCRIPTION AND PLAT MAP, SEE ATTACHED EXHIBITS "A" AND "B"

The foregoing grant is made subject to the following terms and conditions:

1. **PRIMARY USE OF THE PROPERTY:** The easement granted hereunder is within the DISTRICT-owned Walnut Creek Channel ("Property"). The primary use of the Property is for flood control conveyance of storm water and flood protection purposes, including, but not limited to, the right to channeling, impounding and otherwise controlling the flow of drainage waters, as well as performing any other activities, and construction or maintenance of any facilities that the DISTRICT may be required to perform, construct or maintain by other agencies at the Federal, State, Regional or Local level, including but not limited to, water quality and quantity control activities (such activities and those ancillary thereto being hereinafter referred to as "Flood Control"). GRANTEE acknowledges and agrees that the use

just described constitutes the primary use of the Property and that any and all rights granted or implied by this Grant of Easement are secondary and subordinate to the primary use of the Property by the DISTRICT, its successors and assigns. GRANTEE shall not, at any time, use or permit the public to use the easement area in any manner that will interfere with or impair the DISTRICT's primary use of the Property. GRANTEE shall not fence said easement without the prior written approval of the DISTRICT, and shall remove any fencing when requested by DISTRICT to do so. GRANTEE shall not otherwise obstruct the easement area.

2. **DISTRICT TITLE:** GRANTEE hereby acknowledges DISTRICT's title to the Property and agrees never to assail or resist said title. DISTRICT represents and warrants that it has sufficient title to the Property to convey the easement granted hereunder.

3. **CONSTRUCTION AND MAINTENANCE ACTIVITIES:**

(a) GRANTEE shall, prior to any construction, reconstruction, remodeling, excavation, installation or plantings within the easement area, submit specific plans and specifications to the DISTRICT for review and approval. Such approval, together with any additional requirements to be in the form of a written permit issued by DISTRICT to GRANTEE.

(b) Normal maintenance by GRANTEE of its Drain Facilities within the easement area, including minor repairs, inspections, and cleaning of the facilities, shall not require prior notice to the DISTRICT. GRANTEE shall perform maintenance of its facilities so as to prevent damage to the Property.

(c) GRANTEE shall take reasonable precautions to ensure that the Drain Facilities do not convey and discharge any substance other than water onto the Property.

4. **MODIFICATION, RELOCATION, AND REMOVAL OF GRANTEE'S FACILITIES:** To the extent DISTRICT deems necessary to ensure the DISTRICT is able to use the Property for Flood Control, as described in Section 1, DISTRICT reserves the right to require GRANTEE to modify the Drain Facilities, to relocate said facilities within the easement area, or to remove said facilities from the easement area and relocate them to another comparable easement area of the Property. In the event that GRANTEE fails to commence the required work within sixty days after being directed to do so by DISTRICT, or such reasonable extension as DISTRICT may agree to in writing, or if GRANTEE fails to complete the required work within a reasonable time specified by DISTRICT, DISTRICT may perform or complete the work. If GRANTEE determines that it no longer requires the easement, or the relocated easement, for Drain Facilities benefitting the Grantee Property, GRANTEE shall remove the Drain Facilities, vacate the easement, and quitclaim all of GRANTEE's right, title, and interest in and to the easement area to DISTRICT.

5. **DAMAGE TO DISTRICT PROPERTY:** To the extent that any DISTRICT Property, facilities, landscaping, or other improvements are removed or damaged as a result

of GRANTEE's negligence or willful misconduct while using the easement area, or as a result of the negligence or willful misconduct of any other person or entity acting under GRANTEE's direction or control, GRANTEE, at GRANTEE's sole expense and within a reasonable time thereafter, shall cause the removed or damaged DISTRICT Property, facilities, landscaping, or other improvements to be repaired, replaced, or restored to the reasonable satisfaction of DISTRICT.

6. **DAMAGE TO GRANTEE'S FACILITIES:** DISTRICT shall have no responsibility for the protection, maintenance, damage to, or removal of GRANTEE's Drain Facilities caused by or resulting from DISTRICT's use of the Property, or work or operation thereon, in connection with Flood Control. It shall be the sole responsibility of the GRANTEE to provide and maintain adequate protection and surface markings for its own Drain Facilities.
7. **NON-EXCLUSIVE EASEMENT:** The easement granted hereunder is non-exclusive. This easement is subject and subordinate to all previously existing rights, rights of way, licenses, reservations, franchises and easements of record, or that would be evident from a physical inspection or accurate survey of the Property, in and to the Property. DISTRICT shall have the right to require GRANTEE to modify, remove, or relocate its Drain Facilities within the easement area, or to a similar easement to be granted to GRANTEE by DISTRICT at no cost, in a timely manner, at GRANTEE's sole cost, as reasonably necessary to accommodate the DISTRICT's use of the Property for Flood Control, or any other previously existing user's right to construct, replace, enlarge, repair, maintain and operate its facilities, in the same manner as required by Section 4 of this easement, including the rights and remedies contained therein. GRANTEE agrees to take all precautions required to avoid damage to the facilities of the previously existing users. If GRANTEE damages the facilities or improvements of any previously existing user, GRANTEE shall repair or replace such facilities at GRANTEE's sole cost and expense. Nothing contained herein shall be construed to prevent DISTRICT from granting other easements, franchises, licenses or rights of way over said lands, provided however, that said subsequent uses do not unreasonably interfere with GRANTEE's easement rights hereunder.
8. **INDEMNIFICATION, AS-IS CONDITION OF PROPERTY:**
 - (a) In the exercise of all rights under this easement, GRANTEE shall be responsible for any and all injury to the public, to persons and to property arising out of or connected with GRANTEE's use of the Property. GRANTEE shall indemnify, defend, save, protect and hold harmless, DISTRICT and its officers, agents, employees and contractors from and against any and all threatened or actual loss, damage (including foreseeable and unforeseeable consequential damages), liability, claims, suits, demands, judgments, orders, costs, fines, penalties or expense of whatever character, including but not limited to those relating to inverse condemnation, and including attorneys' fees, (hereinafter collectively referred to as "Liabilities") to persons or property, direct or consequential, to the extent that those Liabilities arise from or are connected with GRANTEE's operations, acts, or omissions pursuant to this easement, or GRANTEE's occupancy or use of the easement.

GRANTEE acknowledges that the Property subject to this easement is in a flood control area and is used for Flood Control. GRANTEE shall never have, claim, or assert any right or action against DISTRICT in the event of damage to or disruption of the Drain Facilities caused or contributed to by flooding or water, and shall indemnify, defend, save, protect and hold DISTRICT and its officers, agents, employees, and contractors harmless from all Liabilities resulting from such damage or disruption to the Drain Facilities.

(b) GRANTEE accepts the easement area in an "as is" physical condition, with no warranty, guarantee, representation or liability, express or implied on the part of the DISTRICT as to any matter, including but not limited to the physical condition of the Property and/or the condition and/or possible uses of the land or any improvements thereon, the condition of the soil or the geology of the soil, the condition of the air, surface water or groundwater, the presence of known and unknown faults, the presence of any hazardous substance, materials, or other kinds of contamination or pollutants of any kind in the air, soil, groundwater or surface water, or the suitability of the Property for the construction and use of the improvements thereon. It shall be the sole responsibility of GRANTEE, at its sole cost and expense, to investigate and determine the suitability of the soil, water, geologic, environmental and seismic conditions of the Property for the intended use contemplated herein, and to determine and comply with all building, planning and zoning regulations relative to the Property and the uses to which it can be put. GRANTEE relies solely on GRANTEE's own judgment, experience and investigations as to the present and future condition of the Property or its suitability for GRANTEE's intended use and is not relying in any manner on any representation or warranty by DISTRICT. GRANTEE agrees that neither GRANTEE, its heirs, successors or assigns shall ever claim have or assert any right or action against DISTRICT for any loss, damage or other matter arising out of or resulting from the presence of any hazardous substance or any other condition of the Property at the commencement of the easement or from the release of any hazardous substance in, on or around any part of the Property or in the soil, water, subsurface strata or ambient air by any person or entity other than the DISTRICT following the commencement of this easement. As used herein, "hazardous substance" means any substance, material or waste which is or may become designated, classified or regulated as being "toxic," "hazardous" or a "pollutant" under any federal, state or local law, regulation or ordinance. Nothing in this section is intended in any way to restrict the right of GRANTEE to seek contribution or indemnity from any person or entity other than DISTRICT whose activities are a cause of any discharge, leakage, spillage or emission of hazardous materials on or to the Property.

(c) To the extent permitted by law, GRANTEE shall indemnify, defend, save, protect and hold the DISTRICT harmless from and against any and all Liabilities (including but not limited to the costs of any required or necessary testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties and from and against the preparation of any cleanup, remediation, closure or other required plans whether such action is required or necessary prior to or following the termination of the easement), of any kind or

nature, but only to the extent those Liabilities are caused or contributed to by GRANTEE's operation or performance under this easement, or by GRANTEE's use, release or disposal of any hazardous substance, including all costs, claims, damages (including property and personal injury) caused by the uncovering, release or excavation of hazardous materials (including petroleum) as a result of GRANTEE's construction, reconstruction, maintenance, use, replacement, or removal of its Drain Facilities, to the extent that such activities increase the costs attributable to the cleanup or remediation of such hazardous materials.

(d) The obligations contained in this section shall survive the expiration or other termination of this easement.

9. **NO WARRANTIES:** Except and only to the extent that this Grant of Easement and expressly provides otherwise, GRANTEE understands and acknowledges that DISTRICT makes no representations, warranties or guarantees of any kind or character, express or implied, with respect to the Property, and GRANTEE is entering into this transaction without relying in any manner on any such representation or warranty by DISTRICT.
10. **EASEMENT APPURTENANT:** The easement granted hereunder is appurtenant to, and for the benefit of, the Grantee Property and shall be conveyed together with the Grantee Property. The easement granted hereunder shall not be conveyed, assigned, transferred, or apportioned separate from the Grantee Property. The easement granted hereunder, and the rights and obligations herein set forth, shall inure to the benefit of and be binding upon successor owners of the Grantee Property upon the sale, transfer, or conveyance of the Grantee Property.
11. **NO SECONDARY RIGHTS:** Nothing herein contained shall be deemed to construe that access or other secondary rights are conveyed by this document over any of DISTRICT's adjacent lands lying outside of the aforesaid strip of land above described.
12. **ENTIRE AGREEMENT:** This Grant of Easement contains the entire agreement between the parties hereto and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.
13. **CONSTRUCTION:** This Grant of Easement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this Grant of Easement and their counsel have read and reviewed this Grant of Easement 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 Grant of Easement.

14. **SUCCESSORS AND ASSIGNS:** This indenture and all of the covenants herein contained shall inure to the benefit of and be binding upon the heirs, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, this Grant of Easement is signed and executed this 10th day of May 2023.

CONTRA COSTA COUNTY FLOOD
CONTROL & WATER CONSERVATION
DISTRICT

GRANTEE
MARSH DRIVE HOLDINGS, LLC, A
CALIFORNIA LIMITED LIABILITY
COMPANY

By _____
Brian M. Balbas
Chief Engineer

By Dave Calhoun
Dave Calhoun
Manager

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 CONTRA COSTA)

On _____ before me, Deputy Clerk of the Board of Supervisors, Contra Costa County, personally appeared _____, 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.

Signature: _____
Deputy Clerk

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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 CONTRA COSTA

On 5/10/23, before me, Karen Perrah,
Notary Public, personally appeared David Calhoun, 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.

Signature Karen Perrah (Seal)
Notary Public



Storm Drain Easement
appurtenant to APN 159-140-055
from CCCFC & WCD to Marsh Drive Holdings, LLC
Portion of APN 125-210-XXX
Walnut Creek Channel

EXHIBIT "A"

Real property in an unincorporated area of the County of Contra Costa, State of California, being a portion of Parcel 15A described in the grant deed to the Contra Costa County Flood Control & Water Conservation District (CCCFC & WCD), recorded February 17, 1966 in Book 5060 of Official Records, at page 567, described as follows:

Storm Drain Easement FCPID 5232

Commencing at a point on the westerly line of said Parcel 15A (5060 OR 567), being a point on the northerly right of way line of Marsh Drive; thence leaving said right of way line, and along said westerly line, north 27°14'26" west, 48.22 feet to the Point of Beginning; Thence from said Point of Beginning continuing along said westerly line north 27°14'26" west, 10.04 feet; thence leaving said westerly line north 67°46'59" east, 5.80 feet; thence south 27°14'26" east, 10.04 feet; thence south 67°46'59" west, 5.80 feet to the Point of Beginning.

Containing an area of 58 square feet of land, more or less.

Bearings are based on the California Coordinate System of 1983 (CCS83), Zone III.
Distances given are ground distances.

Exhibit "B", a plat is attached hereto, and by this reference, made a part hereof.

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: Dana M. Trejise

Licensed Land Surveyor
Contra Costa County Public Works Department

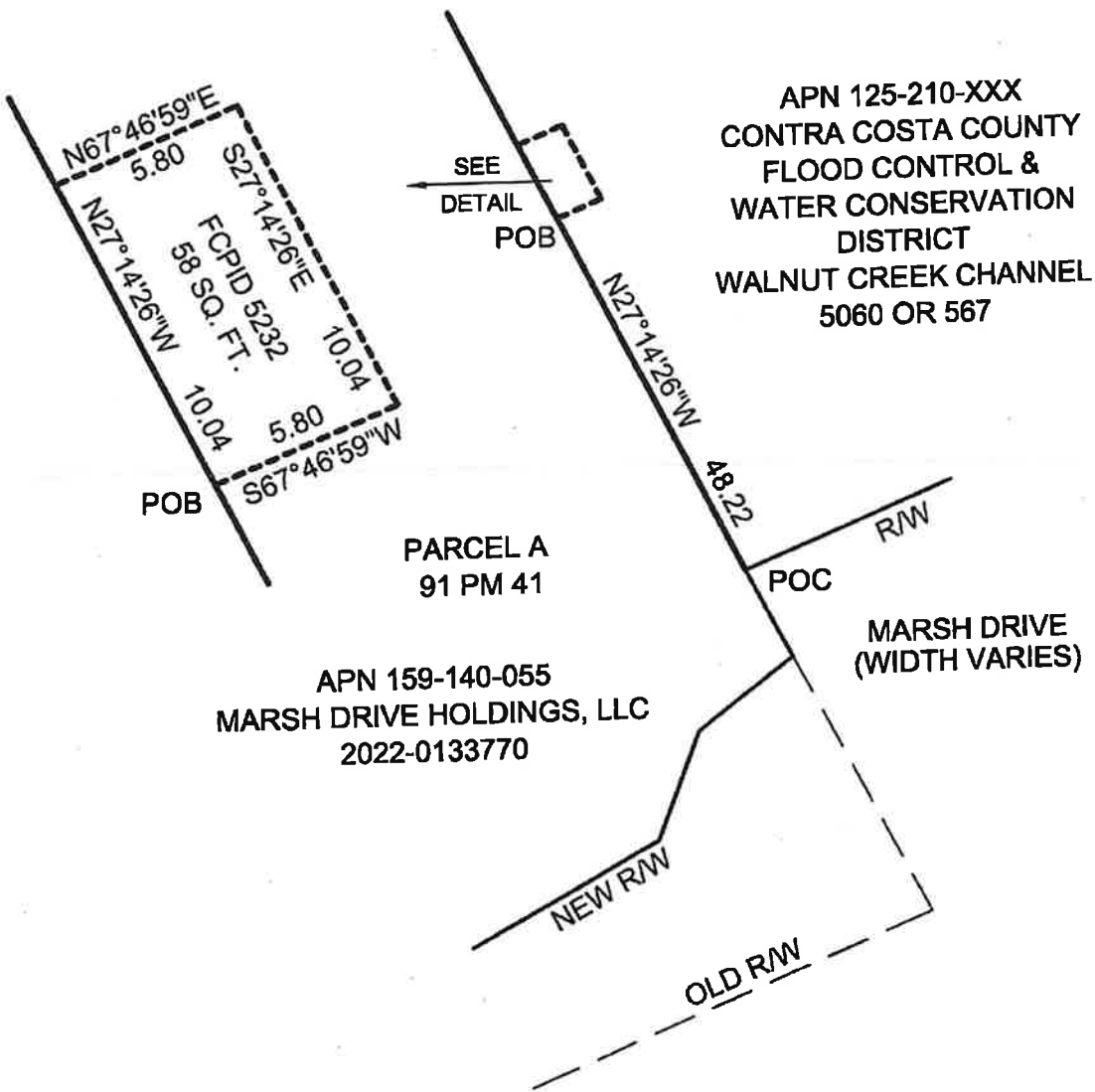
Date: April 10, 2023



EXHIBIT "B"

PLAT TO ACCOMPANY EXHIBIT "A"

RANCHO MONTE DEL DIABLO



APN 125-210-XXX
 CONTRA COSTA COUNTY
 FLOOD CONTROL &
 WATER CONSERVATION
 DISTRICT
 WALNUT CREEK CHANNEL
 5060 OR 567

APN 159-140-055
 MARSH DRIVE HOLDINGS, LLC
 2022-0133770



STORM DRAIN EASEMENT



Contra Costa County
 Public Works Department
 255 Glacier Drive
 Martinez, CA 94553

Instr _____ Recorded _____
 Series # _____

SCALE:	1"=20'	DATE:	4/10/2023
DRAWN BY:	TL	DRAWING NO.	FA-20,141
CHECKED BY:	JS		

File Path: \\survey\projects\2020\3975AU Marsh (Draw)RW3975AU_2020 - Storm Drain Easement.dwg Plot Date: 4/10/2023 9:22:13 AM

