

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 ("CCCFCD"), 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, CCCFCD 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 one hundred and eighty (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 into the Resolution or other documents following the delivery and recordation of said Resolution 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

IN WITNESS WHEREOF, the parties have hereto set their signatures as of the date written below.

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(signatures continued next page)

UNITED STATES ARMY CORPS OF ENGINEERS

By: _____

Steven L. Stockton, P.E.

Its: Director of Civil Works _____

Date: _____

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(signatures continued next page)

By:

Date:

By:

Date:

By:

Date:

Page 7 of 9

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: _____

EXHIBIT A

San Ramon Creek Culvert Segment Agreement

(Real Property Parcels That Include The Segment)

All that certain real property, situated in the State of California, County of Contra Costa and City of Walnut Creek, being a portion of the Rancho Canada Del Hambre Y Las Bousas, Southern Part, described as follows: All of Parcels 3, 4, 5 and 7 as said parcels are shown on Record of Survey RS 3410 filed April 14, 2010, as Document No. 10-73526, in Book 142 of Licensed Surveyors' Maps at Page 34 in the Official Records of Contra Costa County.

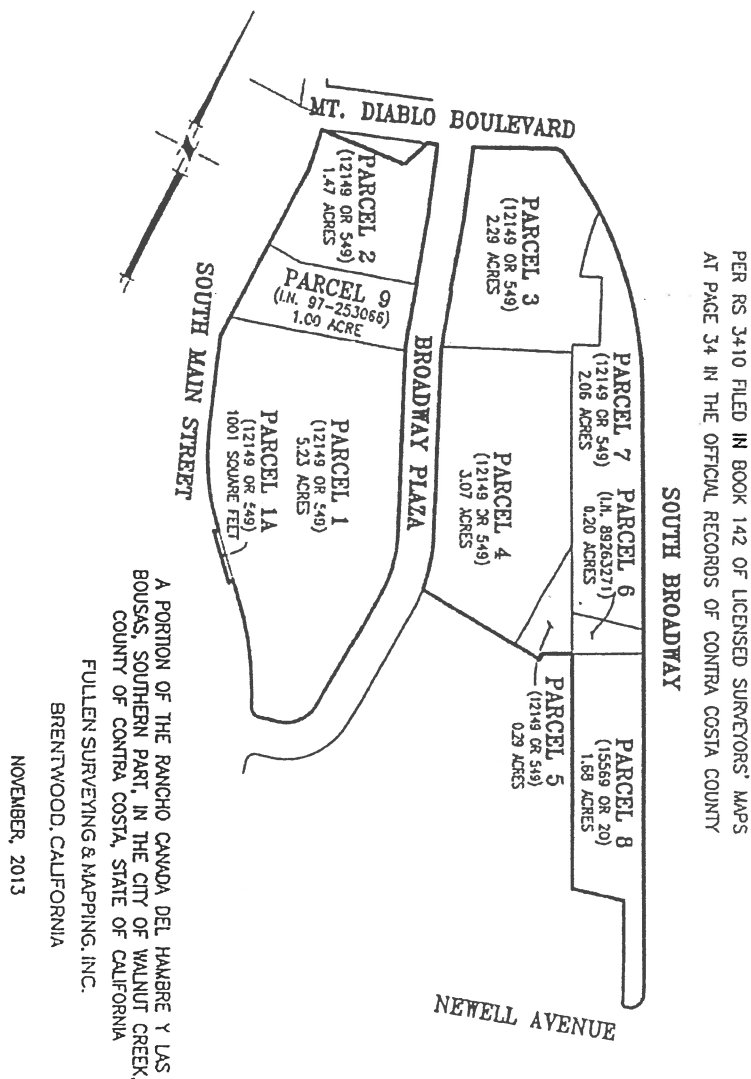


EXHIBIT B

San Ramon Creek Culvert Segment Agreement

(The Segment)

In its letter dated January 26, 1972 transferring the Segment to CCFWD, ACOE described the Segment as follows: "A portion of the Walnut Creek Project, Channel Improvement Mt. Diablo Blvd. to Capwells Culvert (San Ramon Creek), constructed under Contract No. DACW05-71-C-0102 in accordance with Drawing No. DE-4-4-123 and Specification No. 3846, was completed on 5 January 1972. This work, consisting of about 1,000 feet of concrete box culvert and covered concrete channel and appurtenances, was jointly inspected on 11 January 1972."

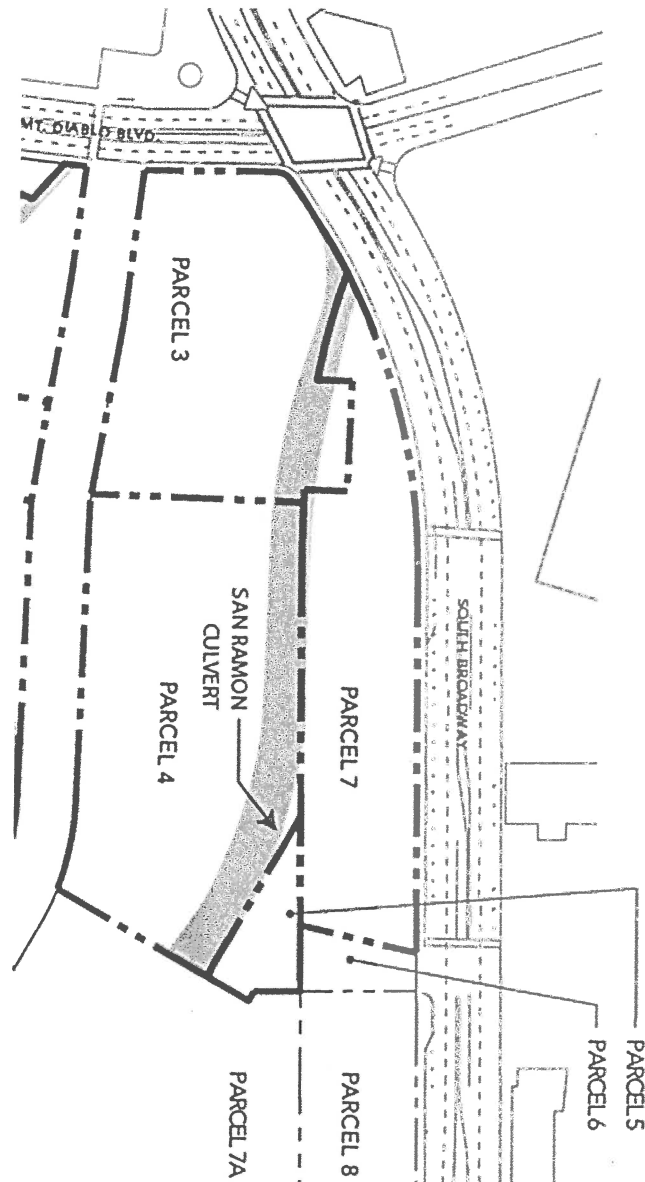


EXHIBIT C

San Ramon Creek Culvert Segment Agreement

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

WALNUT CREEK

Contra Costa County Flood Control

And

Water Conservation District

2400 OAK GROVE ROAD
WALNUT CREEK, CALIFORNIA

TELEPHONE
935-3610

COMMISSION

A. J. JOHNSON, CHAIRMAN
1525 CYPRESS, WALNUT CREEK

EDWIN B. SELLERS
VICE-CHAIRMAN, OAKLEY

FORREST J. SIMONI
SECRETARY—RICHMOND

GERALD S. DEARDORFF
DANVILLE

ARTHUR J. FRIEDLE
PITTSBURG

TOMAS S. VANASEK
WALNUT CREEK

STEVEN H. WELCH
MARTINEZ

26 March 1963

District Engineer
Sacramento District
Corps of Engineers, U. S. Army
P. O. Box 1739
Sacramento 8, California

Dear Sir:

Reference is made to your letter dated March 7, 1963, requesting that the Commissioners of this district give the necessary local interest assurances for the flood protection project on Walnut Creek in Contra Costa County, California.

Pursuant to the authority vested in them, the Commissioners at their regular meeting of March 26, 1963, authorized their Vice-Chairman to give the assurances set forth herein. A certified copy of the Motion of the Commissioners is inclosed herewith for your file.

The Commissioners on behalf of the Contra Costa County Flood Control and Water Conservation District will:

- a. Contribute in cash 7.4 percent of the cost of construction, to be paid in installments at the beginning of each fiscal year. Each installment to be based upon the fiscal year's Federal construction program for the Walnut Creek Project. Final allocation of costs to be made after actual costs are determined.
- b. Provide without cost to the United States all lands, easements, and rights-of-way necessary for construction of the proposed improvements, together with all alterations or relocations of roads, bridges, or utilities required therefor, except railroad facilities.
- c. Maintain and operate each effective element of the work after completion of that element and all works after completion thereof, in accordance with regulations prescribed by the Secretary of the Army.

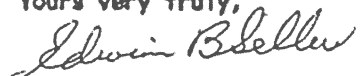
District Engineer

-2-

26 March 1963

d. Hold and save the United States free from damages due to the construction works.

Yours very truly,

A handwritten signature in cursive script, reading "Edwin B. Sellers".

CONTRA COSTA COUNTY FLOOD CONTROL
and WATER CONSERVATION DISTRICT
Edwin B. Sellers, Vice-Chairman

MEMORANDUM OPINION OF ASSURANCES

Assurances from Contra Costa County Flood Control and Water Conservation District as to Walnut Creek Project.

A review of the legal requirements of Public Law 86-645, Laws of 86th Congress, Second Session; the provisions of Sections 12716, 12717, and 12718 of the Water Code of the State of California; and the extract from the minutes of the meeting of Commissioners of Contra Costa County Flood Control and Water Conservation District on 26 March 1963 and its letter of assurances dated 26 March 1963 discloses that the assurances are legally sufficient.

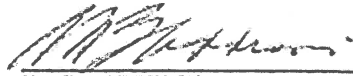
Investigation of the ability of Contra Costa County Flood Control and Water Conservation District to meet the financial obligations assumed by the assurances reveals the following:

1. The District is a Special District of the State of California authorized by General Laws in 1951 (Deering California Code, Chapter 1617, Section 3638.)
2. An estimated \$1,740,000.00 is to be contributed by the District in yearly increments based on scheduled Government construction in each year rather than a lump sum. Funds will be obtained by the District by sale of bonds and by tax assessments as authorized by the above-cited General Laws.

The Comptroller states that the above facts plus the assurances as stated in the letter of assurances are considered sufficient to satisfy all reasonable financial requirements of the Federal Government regarding the financial responsibility of the District.

In view of the above the assurances as submitted are deemed legally and financially sufficient.

Date 14 November 1963


H. B. ADDISON
Attorney, Real Estate Division

I hereby accept said assurances.

Date 15 Nov 63



ROBERT E. MATHE
Colonel, CE
District Engineer

EXHIBIT D

San Ramon Creek Culvert Segment Agreement

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

OFFICE OF THE TECHNICAL STAFF



Contra Costa County
FLOOD CONTROL
& Water Conservation District

C. CARLYLE RICH, Chief Engineer

255 Glacier Drive, Martinez, Calif. 94553
Telephone 228-8200

September 17, 1971

U. S. Army Engineer District,
Sacramento
Corps of Engineers
100 Capitol Mall
Sacramento, California 95814

Attn: Mr. Charles Lee
Levee & Channel Section

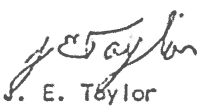
Gentlemen:

Reference is made to discussion regarding modification of the Hold Harmless assurance to the United States by the District.

Enclosed is a copy of Commission Resolution No. 71-179 adopted September 7, 1971 approving the modification of this particular assurance.

Very truly yours,

C. RICH, CHIEF ENGINEER

By: 
J. E. Taylor
Deputy Chief Engineer

JET:cry

Enc.

BEFORE THE COMMISSIONERS OF THE CONTRA COSTA COUNTY
FLOOD CONTROL AND WATER CONSERVATION DISTRICT

In the Matter of Modifying)
Assurances to Corps of Engineers)
for Walnut Creek Project)

RESOLUTION NO. 71-179

The Commissioners of the Contra Costa County Flood Control and
Water Conservation District RESOLVE THAT:

WHEREAS the Corps of Engineers has requested a modification to
the Assurances given by the District to the Corps of Engineers for the
Walnut Creek Flood Control Project as set forth in Commission Resolution
No. 63-36 adopted March 26, 1963;

NOW THEREFORE this Commission does hereby approve the request
of the Corps of Engineers and amends sub-paragraph d in Resolution 63-36
to read "Hold and save the United States free from damages due to the
authorized construction works or any agreed to modifications thereof."

PASSED AND ADOPTED by the following vote of the Commission:

AYES: Mitchell; Mootz, Renayne, Watson

NOES: None

ABSENT: None

I HEREBY CERTIFY that the foregoing is a true and correct copy
of a Resolution of the Commissioners of the Contra Costa County Flood Control
and Water Conservation District adopted on the 7th day of September 1971.

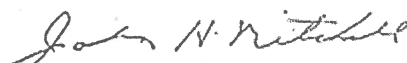

Chairman of the Commission

EXHIBIT E

San Ramon Creek Culvert Segment Agreement

(Letter Dated January 26, 1972)



DEPARTMENT OF THE ARMY
SACRAMENTO DISTRICT, CORPS OF ENGINEERS
650 CAPITOL MALL
SACRAMENTO, CALIFORNIA 95814

C
O
P
Y

REPLY TO
ATTENTION OF

SPKCO-0

26 January 1972

Contra Costa County Flood Control
& Water Conservation District
255 Glacier Drive
Martinez, California 94553

Gentlemen:

Reference is made to the Flood Control Act of 1960 (Public Law 86-645), 14 July 1960, 86th Congress, H.R. 7634, authorizing the Walnut Creek Flood Control Project in accordance with recommendations of the Chief of Engineers in House Document 76, 86th Congress and the assurance agreement covering the cooperative requirements of this project furnished by your District by letter dated 26 March 1964.

A portion of the Walnut Creek Project, Channel Improvement Mt. Diablo Blvd. to Capwells Culvert (San Ramon Creek), constructed under Contract No. DACW05-71-C-0102 in accordance with Drawing No. DE-4-4-123 and Specification No. 3846, was completed on 5 January 1972. This work, consisting of about 1,000 feet of concrete box culvert and covered concrete channel and appurtenances, was jointly inspected on 11 January 1972.

This work, having been completed in accordance with the requirements of the contract, is hereby transferred to Contra Costa County Flood Control and Water Conservation District as of 26 January 1972 for operation and maintenance. Maintenance work required shall be performed in accordance with existing flood control regulations inclosed herewith which have been prescribed by the Secretary of the Army pursuant to Section 3 of the Act of Congress approved 22 June 1936 as amended and supplemented.

An Operation and Maintenance Manual is being prepared and will be furnished your office at a later date. Written acceptance of the completed work is requested.

Sincerely yours,

1 Incl
FC Regs

JAMES C. DONOVAN
Colonel, CE
District Engineer

EXHIBIT F

San Ramon Creek Culvert Segment Agreement (Easement For Flood Control and Incidental Purposes)

MZ-171801
RECORDING REQUESTED BY

Contra Costa County Flood Control
and Water Conservation District

WHEN RECORDED MAIL TO

Flood Control District
255 Glacier Drive
Martinez, California 94553

14077
FEB 26 1971

0326 857

REC'D FEB

FEB 22 11 40 AM '71

COUNTY CLERK
AUDITOR - SELLER DEPT.

BEFORE THE COMMISSIONERS OF CONTRA COSTA COUNTY

FLOOD CONTROL AND WATER CONSERVATION DISTRICT

In the Matter of Property Acquisition

Parcel No. 539

Project Corps of Engineers - Contract 7A

Fund No. 2520-8346-7700

Amount \$9,467.00

Escrow No. 17 - 171801

Conveyor Southern Pacific Transportation Co.

Conveyance Easement, dated _____

RESOLUTION # 71-46

(Accept & Record Conveyance-
Government Code Sec. 27281)

IT IS HEREBY RESOLVED by the Board of Commissioners of the Contra Costa County Flood Control and Water Conservation District, that the Chairman approve the Right of Way Contract dated January 27, 1971 covering this acquisition and accept on behalf of the District the above conveyance, and the County Auditor is hereby authorized to draw a warrant in the above amount payable to Title Insurance and Trust Company to be delivered to District Right of Way Agent.

BE IT FURTHER RESOLVED that a certified copy of this resolution be recorded with said conveyance.

PASSED & ADOPTED on February 16, 1971, by a majority vote of the Board of Commissioners of the Contra Costa County Flood Control and Water Conservation District.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution of the above Board of Commissioners.

John H. Mitchell
Chairman of the Commissioners

CONSENT OF GRANTEE
(Pursuant to Government Code Sec. 27281)

THIS IS TO CERTIFY that the Contra Costa County Flood Control and Water Conservation District, Grantee herein, acting by and through its undersigned Chairman hereby accepts for public purposes the real property or interest therein conveyed by the attached instrument and consents to the recording thereof.

DATED: February 16, 1971

CONTRA COSTA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

By John H. Mitchell
Chairman of the Commissioners

cc: Auditor
Resolution File
R/W Agent (Original & 1 copy)

RECORDED AT REQUEST OF
Title Insurance and Trust Company
FEB 23 1971
AT 4:50 O'CLOCK P.M.
CONTRA COSTA COUNTY RECORDS
W. T. PAASCH
COUNTY RECORDER
FEE \$ 0.00

MZ-171801

END 0326 PM '68

12/1/68

RECORDING REQUESTED BY
Contra Costa County Flood Control
and Water Conservation District

WHEN RECORDED MAIL TO

Flood Control District
255 Glacier Drive
Martinez, California 94553

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EASEMENT

For and in consideration of the benefits to be derived by the undersigned by the establishment and maintenance of the official channel hereinafter referred to, TRANSPORTATION and for other valuable consideration, the undersigned, SOUTHERN PACIFIC COMPANY, A CORPORATION, WHO ACQUIRED TITLE AS SOUTHERN PACIFIC RAILROAD COMPANY, A CORPORATION.

do hereby grant to CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a political subdivision, a perpetual and temporary easement for flood control purposes in, over and across the real property situate in the County of Contra Costa, State of California, as indicated and described in EXHIBIT "A" attached hereto.

It is understood that each of the undersigned grantors grant only that portion of the land described in said Exhibit "A" which is owned by said grantor, or in which said grantor has an interest.

The easement herein granted shall include the right to construct, reconstruct, inspect, maintain and repair a channel, protection works, and appurtenance structures for the purpose of confining the water of San Ramon Creek and its tributaries, to enter upon said land with personnel, vehicles and equipment, to remove all trees and vegetation thereon that interfere with the purpose for which the easement herein is granted, to take therefrom and use earth, rock, sand and gravel for the purpose of excavating, widening, deepening, and otherwise rectifying the channel, and for the construction, maintenance and repair of embankments, fencing, protection works, and appurtenance structures by said Grantee, its officers, agents, and employees, and by persons under contract with it and their employees whenever and wherever necessary for flood control purposes. Also included is the right to install, maintain or remove landscaping and other environmental improvements.

The easement herein granted includes the right to make any necessary earth fills and to locate or relocate existing drainage pipes or structures in connection therewith on lands of the grantor lying outside said easement, provided that after such fill and location or relocation is completed the said lands of grantor will be left in a neat and orderly condition.

San Ramon Rancho Piz, Cont-6

RESERVING AND EXCEPTING to the Grantor of their successors and assigns the right to use the surface and airspace over said easement area in any manner and for any purpose allowable by law or ordinance provided as follows:

1. Plans and specifications for any such uses are submitted to the District for review and approval, including approval from other agencies connected with the installation and maintenance of flood control facilities.

2. The proposed uses will not interfere with District's existing or proposed flood control facilities.

3. If the uses do interfere with the District's flood control facilities, modification of the facilities, to District's standards, may be required of the owners.

4. The Grantor will reimburse the District for extraordinary construction and maintenance costs which the District may incur as a result of any such uses.

5. The District will maintain the flood control channel structure and its appurtenances thereto. Grantor will maintain any channel covering upon the easement granted herein and all facilities and improvements it may construct over the channel covering. In the event such channel covering is constructed in connection with the U.S. Army Corps of Engineers Construction Contract for the Flood Control Channel Improvements, Grantor releases and agrees to defend, save, indemnify and hold harmless District from any and all liability and claims for damages or for death or injuries to persons or property resulting from design, construction, maintenance and use of such channel covering; or use of said surface and airspace rights; however, contractor performing the construction work will be required to enter into contract indemnifying Grantor against liability and to furnish evidence of insurance in form and limits of liability satisfactory to Grantor. After completion, Grantor shall be responsible to assure that the loads imposed on the channel covering upon easement granted herein do not exceed those for which the cover was designed.

6. District shall defend, save, indemnify and hold harmless the Grantor and any of its officers, employees, agents, assigns or contractors, from any and all liabilities and claims for damages or for death or injury to persons or property sustained as the result of the design, construction, maintenance and use of District's channel and facilities.

7. The rights herein granted to District shall lapse and become void if the construction of said channel structure upon said property is not commenced within three (3) year from the date first herein written.

8. Should District, its successor or assigns, at any time abandon the use of said property or any part thereof, or fail at any time to use the same for the purpose contemplated herein for a continuous period of one (1) year, the right hereby given shall cease to the extent of the use so abandoned or discontinued, and Grantor shall at once have the right, in addition to but not in qualification of the rights hereinabove reserved, to resume exclusive possession of said property, or the part thereof the use of which is so discontinued or abandoned.

Upon termination of the rights and privileges hereby granted, and upon removal of channel cover by Grantor, District, at its own cost and expense, agrees to remove said structure from said property and restore said property as nearly as practicable to the same state and condition in which it existed prior to the construction of said structure. Should District in such event fail, neglect or refuse to remove said structure and restore said property, such removal and restoration may be performed by Grantor, at the expense of District, which expense District agrees to pay to Grantor upon demand.

EX-0326 870

TO HAVE AND TO HOLD, together with the right to do all things necessary to be done for the purpose of confining the waters of said stream and its tributaries within said right of way.

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 27th day of January, 1971.

DOCUMENTARY TRANSFER TAX *none required*
☐ COMPUTED ON FULL VALUE OF PROPERTY CONVEYED OR
☒ COMPUTED ON FULL VALUE LESS LIENS & ENCUMBRANCES
REMAINING THEREON AT TIME OF SALE
Tide Insurance and Trust Company
Walter J. Schumacher
Signature of declarant or agent comprising tax-form name
CITY OF Walnut Creek ☐ Unincorporated

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

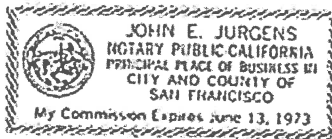
By *W. M. Jackle*
(Title) Vice President

Attest *R. K. Humphrey*
Assistant Secretary

SEAL AFFIXED

STATE OF CALIFORNIA
City and County of San Francisco

On this 27th day of January, in the year One Thousand Nine Hundred and Seventy Seven
before me, John E. Jurgens, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared
W. M. Jackle and R. K. Humphrey, known to me to be the Vice President and Assistant
Secretary, respectively, of the corporation described in and that executed the within
instrument, and also known to me to be the persons who executed it on behalf of the
corporation therein and they acknowledged to me that such corporation executed the
same.



Corporation

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official
seal at my office in the City and County of San Francisco, the day and year in this
certificate first above written.
John E. Jurgens
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires June 13, 1973.

Exhibit "A"

Those portions of land of Southern Pacific Transportation Company, as described in deed to Southern Pacific Railroad Company, recorded June 10, 1891 in Book 60 of Deeds at page 117, Records of Contra Costa County situate in the City of Walnut Creek, County of Contra Costa, State of California included within the land described as follows:

Commencing at a street monument at the intersection of the City of Walnut Creek streets known as Broadway and Mt. Diablo Boulevard, said monument bears south $65^{\circ}58'31''$ west (the bearing south $65^{\circ}58'31''$ west being used for the purpose of this description) 234.93 feet from another street monument in Mt. Diablo Boulevard; thence from said point of commencement north $65^{\circ}58'31''$ east 161.48 feet to the POINT OF BEGINNING of the following description.

R/W PARCEL 538 (Permanent Right of Way)

A strip of land 22 feet in width, the centerline of which is described as follows:

Thence from said POINT OF BEGINNING south $72^{\circ}46'05''$ east 59.58 feet to a point "7-A". Said point "7-A" is the southeasterly terminus of R/W PARCEL 538.

R/W PARCELS 538.1, 539 AND 540 (Permanent Right of Way)

A strip of land 34 feet in width, the centerline of which is described as follows:

Beginning at said point "7-A"; thence south $72^{\circ}46'05''$ east 9.15 feet to a point "7-B".

A strip of land 35 feet in width, lying 19 feet northeasterly and 17 feet southwesterly of the following described line:

Thence from said point "7-B", southeasterly along the arc of a tangent curve concave to the southwest with a radius of 159.11 feet through a central angle of $62^{\circ}45'43''$, a distance of 174.29 feet to a point "7-C".

A uniformly tapering strip of land lying easterly and westerly as follows of the following described line:

Thence from said point "7-C", tangent to said last mentioned curve, south $10^{\circ}00'22''$ east 126.89 feet to a point "7-D". Said strip of land tapers uniformly in width from 17 feet on each side of said point "7-C" to 24 feet on each side of said point "7-D".

A strip of land 49 feet in width lying 24 feet easterly and 25 feet westerly of the following described line:

Thence from said point "7-D", southerly along the arc of a tangent curve concave to the east with a radius of 653.88 feet through a central angle of $12^{\circ}37'32''$, a distance of 144.09 feet to a point "7-E".

A strip of land 48 feet in width, the centerline of which is described as follows:

Thence from said point "7-E", tangent to said last mentioned curve, south $22^{\circ}37'54''$ east 193.09 feet to a point "7-F".

A strip of land 51 feet in width lying 27 feet easterly and 24 feet westerly of the following described line:

Thence from said point "7-F" southerly along the arc of a tangent curve concave to the west with a radius of 563.83 feet through a central angle of $28^{\circ}14'21''$, a distance of 277.89 feet to a point "7-G".

A uniformly tapering strip of land lying easterly and westerly as follows of the following described line:

Thence from said point "7-G", tangent to said last mentioned curve, south $5^{\circ}36'27''$ west 70.00 feet to a point "7-H". Said strip of land tapers uniformly in width from 24 feet on each side of point "7-G" to 51 feet on each side of point "7-H". Said point "7-H" is the southerly terminus of R/W PARCELS 538.1, 539 and 540.

EX-10320
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Thence from said point "7-H", south 5° 16' 21" west 312.43 feet; thence southerly along the arc of a tangent curve concave to the east with a radius of 256.17 feet through a central angle of 15° 31' 27", a distance of 105.91 feet to a point "7-G"; thence from said point "7-G", tangent to said last mentioned curve, south 15° 02' 53" east 323.86 feet to a point "7-P"; thence from said point "7-P" north 78° 52' 46" east 88.00 feet to a point "7-Q"; thence continuing north 78° 52' 46" east 225.45 feet to a chiseled "X" at the most northerly corner of that property described as Parcel Four to the Real Estate Investment Trust of America recorded December 2, 1958 in Book 3273 at page 1 of Official Records of Contra Costa County. Thence from said chiseled "X" south 10° 32' 26" east 175.41 feet (recorde 5 11° 44' 35" E 175.59 feet) to a 2 inch iron pipe monument (tagged L.S. 2305) at the most easterly corner of said Parcel Four (3273 O.R. 1); thence continuing south 10° 32' 26" east 189.17 feet to a 2 inch iron pipe monument (tagged L.S. 2305) which is on the westerly line of Nursery Lane, a private road.

Portions of those parcels of land described in deeds to the Southern Pacific Railroad Company recorded June 10, 1891 in Book 60 of Deeds at page 117 and to the Real Estate Investment Trust of America recorded December 2, 1958 in Book 3273 of Official Records at page 1, all records of Contra Costa County, State of California, described as follows:

R/W PARCELS 538.2 and 539.1 (Temporary Construction Area)

Those portions of land of Southern Pacific Transportation Company as described in deed to Southern Pacific Railroad Company, recorded June 10, 1891 in Book 60 of Deeds at page 117, Records of Contra Costa County situate in the City of Walnut Creek, County of Contra Costa, State of California included within the land described as follows:

Commencing at a street monument at the intersection of the City of Walnut Creek streets known as Broadway and Mt. Diablo Boulevard, said monument bears south 65° 58' 31" west (the bearing south 65° 58' 31" west being used for the purpose of this description) 234.93 feet from another street monument in Mt. Diablo Boulevard; thence from said point of commencement north 65° 58' 31" east 336.44 feet, thence south 20° 51' 31" east 18.40 feet to a point on the southerly right of way line of Mount Diablo Boulevard, said point being the POINT OF BEGINNING of the following description.

Thence from the POINT OF BEGINNING south 20° 51' 31" east 292.01 feet. Thence south 5° 55' 06" east 161.42 feet; thence south 84° 02' 56" east 23.00 feet to a point "7-E-1"; thence south 5° 55' 06" east 54.00 feet; thence south 26° 06' 42" east 74.14 feet; thence south 32° 30' 21" east 80.82 feet; thence southerly along the arc of a non-tangent curve, concave to the west with a radius of 663.83 feet through a central angle of 21° 02' 00", a distance of 243.69 feet to a point "7-G-1"; thence radially from said point "7-G-1" south 89° 35' 00" west 24.34 feet; thence south 65° 19' 09" west 13.47 feet; thence south 1° 43' 20" west 83.19 feet; thence south 40° 03' 40" west 61.87 feet; thence north 34° 22' 00" west 31.00 feet, to a point "7-H" as previously described above under the heading of "R/W PARCELS 538.1, 539 and 540"; thence continuing north 64° 22' 00" west 47.00 feet; thence north 5° 36' 27" east 61.98 feet; thence south 64° 23' 33" east 6.00 feet; thence north 5° 36' 27" east 6.68 feet; thence northerly along the arc of a tangent curve, concave to the west with a radius of 322.63 feet through a central angle of 20° 29' 44", a distance of 187.02 feet to a point "7-F-1", a radial line to said point "7-F-1" bears north 75° 06' 43" east; thence north 55° 44' 45" west 70.67 feet; thence north 82° 09' 53" west 33.04 feet; thence north 7° 04' 35" west 336.47 feet; thence north 53° 22' 10" west 13.60 feet; thence north 17° 16' 52" west 44.99 feet; thence north 31° 40' 51" west 40.22 feet; thence north 1° 15' 36" west 12.20 feet; thence north 23° 05' 53" west 48.36 feet; thence north 41° 04' 00" west 57.65 feet; thence north 13° 14' 23" west 32.25 feet; thence north 72° 46' 05" west 21.50 feet to a point "7-A-1", said point "7-A-1" being on the southerly right of way line of Mount Diablo Boulevard; thence along the said southerly right of way line as follows; north 65° 58' 31" east 55.93 feet and northeasterly along the arc of a tangent curve concave to the northwest with a radius of 630 feet through a central angle of 11° 01' 35", a distance of 121.24 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM: All of the above that is contained within the previously described "R/W PARCEL 538" and "R/W PARCELS 538.1, 539 and 540".

R/W PARCELS 539.2 (Limited Temporary Access Area)

A temporary access easement for ingress and egress for men, materials and equipment over the lands hereinafter described:

Beginning at the POINT OF BEGINNING as described in "R/W PARCELS 539.2 and 539.1"; thence along the temporary construction area easterly line as follows; south 25° 51' 31" east 292.01 feet, thence south 5° 55' 33" east 131.42 feet, thence south 84° 04' 54" east 23.00 feet to point "7-E-1" as described in "R/W PARCELS 539.2 and 539.1"; thence leaving said easterly line north 5° 55' 33" west 171.05 feet; thence north 20° 51' 31" west 299.40 feet to the southerly right of way line on Mount Diablo Boulevard; thence southwesterly along the arc of a non-tangent curve, concave to the northwest with a radius of 530 feet through a central angle of 2° 10' 03", a distance of 23.83 feet to the POINT OF BEGINNING. A radial line to said POINT OF BEGINNING bears south 35° 03' 04" east.

R/W PARCEL 539.3 (Limited Temporary Access Area)

A temporary access easement for ingress and egress for men, materials and equipment over the lands hereinafter described:

Beginning at point "7-G-1" as described above in "R/W PARCELS 539.2 and 539.1"; thence south 89° 33' 00" west 24.34 feet to a point on the easterly line of said Southern Pacific Railroad Company property (40 D 117); thence south 24° 44' 09" east 34.57 feet along said westerly line; thence leaving said westerly line northerly along the arc of a non-tangent curve, concave to the west with a radius of 663.83 feet through a central angle of 4° 17' 45", a distance of 49.77 feet to said point "7-G-1". A radial line to said point "7-G-1" bears north 89° 33' 00" east.

R/W PARCEL 539.3 (Limited Temporary Access Area)

A temporary access easement for ingress and egress for men, materials and equipment over the lands hereinafter described:

Beginning at point "7-A-1" as described above in "R/W PARCELS 539.2 and 539.1"; thence south 65° 58' 31" west 3.02 feet along the southerly right of way line of Mount Diablo Boulevard; thence leaving said southerly line south 29° 02' 11" east 49.23 feet; thence south 41° 04' 00" east 38.05 feet; thence south 23° 05' 53" east 44.15 feet; thence south 1° 15' 36" east 13.15 feet; thence south 31° 40' 51" east 41.97 feet; thence south 17° 16' 52" east 47.35 feet; thence south 53° 22' 10" east 12.33 feet; thence south 7° 04' 35" east 39.50 feet; thence south 82° 09' 58" east 39.43 feet; thence south 55° 44' 45" east 21.45 feet to a point on the westerly line of the previously described "R/W PARCELS 539.2 and 539.1"; thence along the said westerly line as follows: northerly along the arc of a tangent curve concave to the west with a radius of 522.83 feet through a central angle of 1° 50' 17", a distance of 17.99 feet to the previously mentioned point "7-F-1" in "R/W PARCELS 539.2 and 539.1"; a radial line to said point "7-F-1" bears north 75° 33' 43" east; thence north 55° 44' 45" west 70.87 feet; thence north 82° 00' 53" west 33.04 feet; thence north 7° 04' 35" west 385.47 feet; thence north 53° 22' 10" west 13.60 feet; thence north 17° 16' 52" west 44.99 feet; thence north 31° 40' 51" west 40.22 feet; thence north 1° 15' 36" west 12.20 feet; thence north 23° 05' 53" west 48.36 feet; thence north 41° 04' 00" west 37.95 feet; thence north 13° 14' 28" west 32.25 feet; thence north 72° 46' 05" west 21.00 feet to said point "7-A-1".

All of the above temporary easements shall terminate upon completion of construction of the U. S. Army Corps of Engineers San Ramon Creek Flood Control Project - Contract No. 7A or by February 30, 1972.

• END OF DOCUMENT •

112-16982-2
RECORDING REQUESTED BY

Contra Costa County Flood Control
and Water Conservation District

WHEN RECORDED MAIL TO

FLOOD CONTROL DISTRICT
255 Glacier Drive
Martinez, California 94553

MAR 29 1971

21530

6347 755
RECORDED AT REQUEST OF
The Insurance and Trust Company
AT 7 O'CLOCK A.M.
CONTRA COSTA COUNTY RECORDS
W. T. PAASCH
COUNTY RECORDER
FEE \$ OFF

BEFORE THE COMMISSIONERS OF CONTRA COSTA COUNTY

FLOOD CONTROL AND WATER CONSERVATION DISTRICT

In the Matter of Property Acquisition

Parcel No. 538

Project Walnut Creek Corps of Engineers Contract #7A

Fund No. 2520-8346-7700

RESOLUTION # 71-24

Amount \$ 10,800.00

Escrow No. M7-169826

(Accept & Record Conveyance-
Government Code Sec. 27281)

Conveyor R. E. L. T. A.

Conveyance Easement, dated 12-30-70

IT IS HEREBY RESOLVED by the Board of Commissioners of the Contra Costa County Flood Control and Water Conservation District, that the Chairman approve the Right of Way Contract dated 12-30-70 covering this acquisition and accept on behalf of the District the above conveyance, and the County Auditor is hereby authorized to draw a warrant in the above amount payable to Title Insurance and Trust Company to be delivered to District Right of Way Agent.

BE IT FURTHER RESOLVED that a certified copy of this resolution be recorded with said conveyance.

PASSED & ADOPTED on January 25, 1971, by a majority vote of the Board of Commissioners of the Contra Costa County Flood Control and Water Conservation District.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution of the above Board of Commissioners.

Joan N. Butcher
Chairman of the Commissioners

CONSENT OF GRANTEE
(Pursuant to Government Code Sec. 27281)

THIS IS TO CERTIFY that the Contra Costa County Flood Control and Water Conservation District, Grantee herein, acting by and through its undersigned Chairman hereby accepts for public purposes the real property or interest therein conveyed by the attached instrument and consents to the recording thereof.

DATED: 25 January 1971

CONTRA COSTA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

By Joan N. Butcher
Chairman of the Commissioners

cc: Auditor
Resolution File
R/W Agent (Original & 1 copy)

RECORDING REQUESTED BY
Contra Costa County Flood Control
and Water Conservation District

6347-56

WHEN RECORDED MAIL TO
Flood Control District
255 Glacier Drive
Martinez, California 94553

112-169826

SPACE ABOVE THIS LINE FOR RECORDER'S USE

E A S E M E N T

For and in consideration of the benefits to be derived by the undersigned by the establishment and maintenance of the official channel hereinafter referred to, and for other valuable consideration, the undersigned, O. KELLY ANDERSON, EDWIN D. BROOKS, JOHN H. GARDINER, GEORGE HOWLAND, CHARLES SEGAL, PHILIP H. THEOPOLD AND FRANCIS C. WELCH, AS TRUSTEES UNDER DECLARATION OF TRUST OF REAL ESTATE INVESTMENT

TRUST OF AMERICA, A TRUST CREATED UNDER THE LAWS OF THE STATE MASSACHUSETTS

do hereby grant to CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a political subdivision, a perpetual easement for flood control purposes in, over and across the real property situate in the County of Contra Costa, State of California, described in EXHIBIT "A" attached hereto.

It is understood that each of the undersigned grantors grant only that portion of the land described in said Exhibit "A" which is owned by said grantor, or in which said grantor has an interest.

The easement herein granted shall include the right to construct, reconstruct, inspect, maintain and repair a channel, protection works, and appurtenance structures for the purpose of confining the water of San Ramon Creek and its tributaries, to enter upon said land with personnel, vehicles and equipment, to remove all trees and vegetation thereon that interfere with the purpose for which the easement herein is granted, to take therefrom and use earth, rock, sand and gravel for the purpose of excavating, widening, deepening, and otherwise rectifying the channel, and for the construction, maintenance and repair of embankments, fencing, protection works, and appurtenance structures by said Grantee, its officers, agents, and employees, and by persons under contract with it and their employees whenever and wherever necessary for flood control purposes. Also included is the right to install, maintain or remove landscaping and other environmental improvements.

The easement herein granted includes the right to make any necessary earth fills and to locate or relocate existing drainage pipes or structures in connection therewith on lands of the grantor lying outside said easement, provided that after such fill and location or relocation is completed the said lands of grantor will be left in a neat and orderly condition.

RESERVING AND EXCEPTING to the Grantor or their successors and assigns the right to use the surface and airspace over said easement area in any manner and for any purpose allowable by law or ordinance provided as follows:

1. Plans and specifications for any such uses are submitted to the District for review and approval, including approval from other agencies connected with the installation and maintenance of flood control facilities.
2. The proposed uses will not interfere with District's existing or proposed flood control facilities.
3. If the uses do interfere with the District's flood control facilities, modification of the facilities, to District standards, may be required of the owners.
4. The Grantor will reimburse the District for extra-ordinary construction and maintenance costs which the District may incur as a result of any such uses.
5. The Grantor will hold District, its agents, assigns, or contractors harmless for loss or damage to any buildings or structures that the owner may place in said easement area which may be caused by construction or maintenance of District facilities excepting damages from negligent acts and harmless for any damage, injury or loss which results from grantor's use of said surface and airspace rights.
6. District will maintain the flood channel structure and appurtenances thereto. Grantor will maintain the channel cover and all facilities constructed over the channel cover constructed under the Corps of Engineers contract or by Grantor. Grantor shall be responsible to assure that the loads imposed on the channel cover do not exceed those for which the cover was designed. Grantor shall obtain a permit from the District to construct any facilities within the permanent channel right of way. District is required to obtain the approval of the Corps of Engineers before allowing such improvements to be constructed within the permanent channel right of way. Such permit of the District and such approval of the Corps of Engineers is not to be unreasonably withheld as to construction by or on behalf of Grantor utilizing the upper surface of such channel or channel cover, the airspace above the same or both.

Grantor shall defend, save, indemnify and hold harmless the District and any of its officers, employees, agents, assigns or contractors from any and all liabilities and claims for damages or for death or injury to person(s) or property sustained as a result of the design, construction, maintenance and use of the channel cover, excepting liabilities and damages from negligent acts during construction of any such channel covering by the U. S. Army Corps of Engineers and its contractors.

(provided such design is approved by Grantor).

TO HAVE AND TO HOLD, together with the right to do all things necessary to be done for the purpose of confining the waters of said stream and its tributaries within said right of way.

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 21st day of January, 1971.

The above Trust Estate Investment Trust of America is a corporation organized under the laws of the State of New York, and its principal office is located at 100 West 42nd Street, New York, New York 10018. It is a subsidiary of the Trust Company of New York, Inc., a corporation organized under the laws of the State of New York, and its principal office is located at 100 West 42nd Street, New York, New York 10018. It is a subsidiary of the Trust Company of New York, Inc., a corporation organized under the laws of the State of New York, and its principal office is located at 100 West 42nd Street, New York, New York 10018.

By John H. Anderson Trustee

By Philip H. Anderson Trustee

O. KELLY ANDERSON ET AL, AS TRUSTEES
UNDER DECLARATION OF TRUST OF REAL
ESTATE INVESTMENT TRUST OF AMERICA

By John H. Anderson Trustee

By Philip H. Anderson Trustee

6347 58

COMMONWEALTH OF MASSACHUSETTS)

) ss. January 28, 1971 Boston

COUNTY OF SUFFOLK)

Then personally appeared each of the following persons,
each of them known to me, and each of them known to me to be
a Trustee of REAL ESTATE INVESTMENT TRUST OF AMERICA:

Henri J. Bourneuf

John H. Gardiner

George Howland

Philip H. Theopold

and acknowledged the execution of the foregoing to be his
free act and deed.

Before me:

W. Spencer Brodell
W. Spencer Brodell, Notary
Public

SEAL AFFIXED

DOCUMENTARY TRANSFER TAX	
<input checked="" type="checkbox"/> COMPUTED ON FULL VALUE	
<input type="checkbox"/> COMPUTED ON FULL VALUE LESS DEED TAX	
Title Insurance and Trust Company	
Signature of declarant or agent determining full value	
CITY OF <i>Walnut Creek</i>	<input type="checkbox"/> Unrecorded

PARCELS 538

A portion of that parcel of land situated in the City of Milpitas, County of Contra Costa, State of California, described as follows:

Commencing at a street monument at the intersection of the City of Milpitas streets known as Broadway and Mr. Diablo Boulevard, said monument bears south $65^{\circ}58'31''$ west (the bearing south $65^{\circ}58'31''$ west being used for the purpose of this description) 234.93 feet from another street monument in Mr. Diablo Boulevard; thence from said point of commencement north $65^{\circ}58'31''$ east 161.48 feet to the POINT OF BEGINNING of the following description.

R/W PARCEL 538 (Permanent Right of Way)

A strip of land 22 feet in width, the centerline of which is described as follows:

Thence from said POINT OF BEGINNING south $72^{\circ}40'05''$ east 59.53 feet to a point "7-A". Said point "7-A" is the southeasterly terminus of R/W PARCEL 538.

R/W PARCELS 538, 1, 539 AND 540 (Permanent Right of Way)

A strip of land 34 feet in width, the centerline of which is described as follows:

Beginning at said point "7-A"; thence south $72^{\circ}40'05''$ east 9.15 feet to a point "7-B".

A strip of land 36 feet in width, lying 19 feet northeasterly and 17 feet southwesterly of the following described line:

Thence from said point "7-B", southeasterly along the arc of a tangent curve concave to the southwest with a radius of 159.11 feet through a central angle of $62^{\circ}45'43''$, a distance of 174.29 feet to a point "7-C".

A uniformly tapering strip of land lying easterly and westerly as follows of the following described line:

Thence from said point "7-C", tangent to said last mentioned curve, south $10^{\circ}00'22''$ east 128.89 feet to a point "7-D". Said strip of land tapers uniformly in width from 17 feet on each side of said point "7-C" to 24 feet on each side of said point "7-D".

A strip of land 49 feet in width lying 24 feet easterly and 25 feet westerly of the following described line:

Thence from said point "7-D", southerly along the arc of a tangent curve concave to the east with a radius of 653.88 feet through a central angle of $12^{\circ}37'32''$, a distance of 144.09 feet to a point "7-E".

A strip of land 45 feet in width, the centerline of which is described as follows:

Thence from said point "7-E", tangent to said last mentioned curve, south $22^{\circ}37'54''$ east 193.09 feet to a point "7-F".

A strip of land 51 feet in width lying 27 feet easterly and 24 feet westerly of the following described line:

Thence from said point "7-F" southerly along the arc of a tangent curve concave to the west with a radius of 563.85 feet through a central angle of $28^{\circ}14'21''$, a distance of 217.09 feet to a point "7-G".

A uniformly tapering strip of land lying easterly and westerly as follows of the following described line:

Thence from said point "7-G", tangent to said last mentioned curve, south $5^{\circ}36'27''$ west 70.00 feet to a point "7-H". Said strip of land tapers uniformly in width from 24 feet on each side of point "7-G" to 31 feet on each side of point "7-H". Said point "7-H" is the southerly terminus of R/W PARCELS 538, 1, 539 and 540.

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[illegible]

Certificates of those periods of land acquired by deed to the Southern Pacific Railroad Company, recorded June 15, 1904 in Vol. 1 of Books 117 and 118 of the Real Estate Investment Trust of America records in Book 2, of the July 1923 of Official Records of Page 1, all records of Southern Railway Company, State of California, described as follows:

7. ANALYSIS OF THE DATA (Summary Description Area)

A temporary construction camp will be a purchase of bringing men, materials, and equipment on the lands adjoining the site during the construction of these control improvements on lands adjacent to the site. Included the right to remove any vegetation, fencing, buildings or other structures that may interfere with such construction. Also including excavation and surface operations as necessary for the project.

Commencing at a street monument at the intersection of the City of Walnut Creek streets known as Broadway and Mr. Dito Boulevard, said monument bears south 69° 38' 31" west (the bearing south 69° 38' 31" west being used for the purpose of this description) 251.93 feet from another street monument in Mr. Dito Boulevard; thence from said point of commencement north 13° 01' 31" east 334.44 feet; thence south 20° 51' 31" east 16.40 feet to a point on the easterly right of way line of Mount Diablo Boulevard, said point being the POINT OF BEGINNING of the following description:

thence from the POINT OF BEGINNING 359° 27' 31" east 282.31 feet; thence south 7° 33' 34" east 181.42 feet; thence south 34° 34' 34" east 23.83 feet to a point "7-B-1"; thence south 3° 15' 33" east 34.04 feet; thence south 76° 00' 42" east 74.14 feet; thence south 32° 52' 31" east 35.12 feet; thence southerly along the arc of a non-tangent curve, concave to the left with a radius of 663.83 feet through a central angle of 21° 22' 00", a distance of 342.00 feet to a point "7-G-1"; thence radially from said point "7-G-1" south 81° 23' 02" west 24.24 feet; thence south 83° 19' 09" west 13.41 feet; thence south 1° 49' 37" west 47.19 feet; thence south 40° 03' 40" west 81.67 feet; thence north 61° 11' 02" west 21.33 feet, to a point "7-H" as previously described above under the heading of "RAILROADS 338.1, 339 and 340"; thence continuing north 64° 21' 30" west 47.19 feet; thence north 6° 33' 27" east 81.96 feet; thence south 84° 23' 33" east 3.43 feet; thence north 5° 36' 27" east 8.63 feet; thence northerly along the arc of a tangent curve, concave to the west with a radius of 622.83 feet through a central angle of 25° 25' 44", a distance of 187.02 feet to a point "7-F-1", a radial line to said point "7-F-1" bears north 75° 03' 43" east; thence north 32° 34' 43" west 33.67 feet; thence north 32° 09' 52" west 33.04 feet; thence north 7° 34' 33" west 339.7 feet; thence north 53° 22' 10" west 13.60 feet; thence north 12° 10' 32" west 34.13 feet; thence north 31° 40' 51" west 40.22 feet; thence north 1° 13' 50" west 144.43 feet; thence north 23° 03' 33" west 45.35 feet; thence north 41° 04' 27" west 11.13 feet; thence north 13° 14' 12" west 30.25 feet; thence north 71° 43' 23" west 11.13 feet, to a point "7-A-1", said point "7-A-1" being on the southerly right of way line of Grand Branch Railroad; thence along the southerly right of way line as follows; north 40° 25' 31" east 35.93 feet and northeasterly along the arc of a tangent curve concave to the northwest with a radius of 321 feet through a central angle of 31° 31' 33", a distance of 121.34 feet to the POINT OF BEGINNING.

EXCERPTED THEREFROM: All of the above data is contained within the previously described "R/A PARCELS 933" and "R/A PARCELS 933.1, 933 and 934".

[illegible]

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beginning at point "T-3-1" as described above in NVA PARCELS 551.2 and 553.1"; thence north 59° 35' 00" west 71.3 feet to a point on the westerly line of said Southern Pacific Railroad Company property (Lot 2 1/2 117); thence south 24° 44' 59" east 145.7 feet along said westerly line; north leaving said westerly line north-60° along the end of a line 121.2 feet above, and then to the east with a radius of 143.13 feet through a central angle of 4° 17' 45", a distance of 49.77 feet to said point "T-3-1". A radial line to said point "T-3-1" bears north 59° 35' 00" east.

Beginning at point "7-A-1" as described above in "R/A PARCELS 539.2 and 539.1"; thence south 35° 38' 31" west 6.02 feet along the southerly right of way line of Mount Diablo Boulevard; thence leaving said southerly line south 29° 02' 11" east 49.23 feet; thence south 41° 04' 00" east 28.00 feet; thence south 23° 03' 33" east 44.13 feet; thence south 1° 15' 32" east 13.15 feet; thence south 31° 40' 31" east 41.97 feet; thence south 17° 16' 52" east 49.33 feet; thence south 32° 22' 10" east 12.24 feet; thence south 3° 04' 33" east 33.60 feet; thence south 32° 09' 55" east 33.45 feet; thence south 33° 44' 43" east 11.43 feet to a point on the westerly line of the previously described "R/A PARCELS 539.2 and 539.1"; thence along the said westerly line as follows: northerly along the arc of a tangent curve concave to the west with a radius of 224.3 feet to a point a central angle of 1° 03' 17", a distance of 17.40 feet to the previously mentioned point "7-F-1" in "R/A PARCELS 539.2 and 539.1"; a radial line to said point "7-F-1" bears north 79° 00' 43" east; thence north 35° 42' 43" west 70.87 feet; thence north 32° 09' 55" west 33.44 feet; thence north 3° 04' 33" west 339.47 feet; thence north 23° 22' 10" west 43.60 feet; thence north 17° 16' 52" west 44.99 feet; thence north 31° 40' 31" west 40.22 feet; thence north 1° 15' 32" west 12.30 feet; thence north 23° 03' 55" west 48.38 feet; thence north 31° 34' 03" west 47.93 feet; thence north 13° 14' 25" west 32.25 feet; thence north 32° 43' 33" west 23.00 feet to said point "7-A-1".

END OF DOCUMENT

EXHIBIT G
San Ramon Creek Culvert Segment Agreement
(Form of Culvert Maintenance Agreement)

Recording requested by and
when recorded return to:

CITY OF WALNUT CREEK
City Clerk
1666 N. Main St.
Walnut Creek, CA 94596

Space Above This Line for Recorder's Use

**AGREEMENT FOR MAINTENANCE OF BOX
CULVERTS AND RELATED LICENSE AGREEMENT**

THIS Agreement for Maintenance of Box Culverts and Related License Agreement ("Agreement") is made this ____ day of _____, 2014, by and between Macerich Northwestern Associates, a California general partnership (hereinafter called "Owner"), and the City of Walnut Creek, a municipal corporation (hereinafter called "City").

WHEREAS, Owner is the owner of real property in the City of Walnut Creek more particularly described in Exhibit A-1 attached hereto and incorporated herein by reference (the "Property").

WHEREAS, retail shop complexes and parking structures have been constructed over and across certain existing box drainage culverts located on the Property, referred to respectively as the "Las Trampas Culvert" and the "San Ramon Culvert" (individually, a "Culvert" and collectively, the "Culverts"), the approximate locations of which Culverts are shown in Exhibit A-2 attached hereto and incorporated herein by reference.

WHEREAS, the Las Trampas Culvert and the San Ramon Culvert provide channels for Las Trampas Creek and San Ramon Creek, respectively, and the continued, unimpeded flow of Las Trampas Creek and San Ramon Creek through the Culverts is necessary for the protection of life and property in the vicinity of the Property.

WHEREAS, the Culverts benefit property both upstream and downstream owned by the City and others.

WHEREAS, Owner and City executed that certain Agreement for Maintenance of Box Culvert and its Waterway, dated May 11, 1991, recorded on May 16, 1991, in the Contra Costa County Recorder's Office as document number 91-91410 (the "Parking Structure Culvert Maintenance Agreement"), and that certain Agreement for Maintenance of Box Culvert and its Waterway, dated November 18, 1997, recorded on December 30, 1997, in the Contra Costa County Recorder's Office as document

number 97-053068, and thereafter re-recorded on April 21, 1998, in the Contra Costa County Recorder's Office as document number 98-0085974 (the "Horseshoe Parcel Culvert Maintenance Agreement").

WHEREAS, City, upon receipt of all necessary approvals, wishes to quitclaim to Owner and Owner wishes to receive from City, all right, title and interest granted to City under that certain Deed, dated June 18, 1957, executed by the MacDonald Walnut Creek Project as Grantor, in favor of City as Grantee, recorded on July 10, 1957, in the Contra Costa County Recorder's Office as document number 38857 (the "1957 MacDonald Deed"), including, without limitation, all right title and interest in the right of way and utility easement, and culvert and utility easement, granted thereunder.

WHEREAS, Owner and City wish to terminate the Parking Structure Culvert Agreement and the Horseshoe Parcel Culvert Maintenance Agreement, and provide for the maintenance of the Las Trampas Culvert and the San Ramon Culvert in a single, unified agreement.

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

1. Maintenance Obligations. Owner agrees to diligently maintain the Culverts according to the requirements of the maintenance schedule set forth in this Section 1 (the "Maintenance Obligations"). The Maintenance Obligations shall include the following:

- a. Keeping the Culverts clean and free from any and all debris of whatever kind at all times.
- b. Inspection by a licensed structural engineer twice a year, once in August or September before the commencement of the winter rain season, and again in March or April at the end of the winter rain season.
- c. Special inspection by a licensed structural engineer immediately after any earthquake, flood or other unusual occurrence, or as otherwise may be considered necessary by the City Engineer.
- d. Inspection shall be specifically directed to the development of cracks and/or any distortion in the alignment and/or deflection in the soffit, subsidence of walls, floor and/or any damage or failure of the structural members of the Culverts.
- e. Inspection shall include a report on the status of maintenance, including cleaning of the waterway within the Culvert, and any corrective construction completed in the previous year. Any corrective construction shall require the issuance of a building permit.
- f. Submission of reports of inspections to the City Engineer within one (1) month of the completion of each inspection.

g. If inspection reveals damage to, or failure of, a Culvert, Owner will commence and complete repairs as follows:

(i) If local, regional, state or federal law requires Owner to obtain approval in order to perform any repairs ("Required Approvals"), Owner shall submit application(s) for such approvals within a reasonable time, which time shall not exceed thirty (30) days following the date of the inspection, and Owner shall thereafter complete the repairs within a reasonable time after the Required Approvals are obtained, as determined by the City Engineer; provided, however, that the time to obtain the Required Approvals and/or complete the repairs may be extended upon the prior written approval of the City Engineer.

(ii) If Required Approvals are not necessary, then Owner shall commence such repairs within thirty (30) days following the date of the inspection, or sooner as may be required for safety reasons, and Owner shall complete the repairs before November of each year unless approval of an extension of time to complete the repairs is obtained in writing from the City Engineer.

(iii) In setting time periods and determining whether to grant any time extension, the City Engineer shall take into account commercial reasonableness and established industry standards.

h. With respect to the San Ramon Culvert, Owner will maintain and repair the Culvert such that it will have the capacity to convey waters diverted into the San Ramon Creek at the low flow diversion structure constructed by the Army Corps of Engineers located at the mouth of the San Ramon Bypass (the "Weir"), together with other normal local drainage flows that enter San Ramon Creek between the Weir and the Army Corps of Engineers Segment, and the ability to handle excess flood flows when the bypass channel is at full capacity and backwater from the Las Trampas Creek peak flows. In addition, should the structure and capacity of the Culvert be altered in the context of a new local flood control plan, such plan will assure the hydraulic profile necessary to maintain the existing flood risk management benefits.

i. City shall have the right to access the Culverts to inspect the Culverts and any repairs upon reasonable prior notice to Owner. Owner or Owner's agent shall have the right to accompany City during any such inspection. Except as otherwise provided in Section 3, City shall be permitted to access the Las Trampas Culvert at the access point shown on Exhibit A-2 (the "City Access Point").

j. Owner and City acknowledge and agree that in order for Owner to access the Culverts from (i) the bridge across Las Trampas Creek located on Main Street, and (ii) the intersection of North Broadway and Lincoln Avenue (collectively, the "Offsite Access Points"), Owner shall be required to obtain encroachment permits from City, which encroachment permits Owner shall obtain prior to accessing the Culverts from the Offsite Access Points.

k. Owner shall be responsible for any damage to City street pavements, existing utilities, curbs, gutters, sidewalks or to any private property or improvements to the extent attributable to its maintenance or repair of any portion of the Culverts and shall repair, replace and restore in kind any such damaged facilities at its sole expense and to the reasonable approval of the City.

2. Performance of Maintenance Obligations. Owner agrees that the Maintenance Obligations required to be performed by Owner under this Agreement are special in character, and, as such, the non-performance of such Maintenance Obligations may not be reasonably or adequately compensated through the payment of damages. Therefore, the parties hereto agree that the Maintenance Obligations may also be enforced by City in an action brought for specific performance. The parties agree further that any damage to, or obstruction of, the Culverts which results in a culvert condition rating of 3 or worse, as determined by a licensed structural engineer in accordance with the culvert condition rating system set forth in Appendix C to California Department of Transportation Design Information Bulletin 83-02, may, in City's discretion, be deemed a nuisance subject to abatement in accordance with applicable City ordinances.

3. City's License to Enter the Property to Perform Maintenance Obligations. Notwithstanding the foregoing, in the event that Owner fails to commence performance of, and diligently prosecute, the Maintenance Obligations within fifteen (15) days of the receipt by Owner of written notice from City setting forth in reasonable detail the nature of Owner's failure to perform, then in addition to its other rights and remedies, City is hereby granted a license to enter the Property and the Culverts, either from the City Access Point or elsewhere as City deems appropriate, to perform the Maintenance Obligations. Nothing herein shall imply any duty or obligation on the part of City to perform any such Maintenance Obligations, nor shall City's performance of any such Maintenance Obligations constitute a waiver of Owner's default in failing to do the same. Except to the extent arising out of City's negligence or willful misconduct, City shall have no liability for interference with any business conducted on the Property or Culverts, or any other injury, loss, liability, or damage as a consequence of any such entry or performance of the Maintenance Obligations. If City performs any Maintenance Obligations as provided herein, Owner shall promptly reimburse City for the cost so incurred by City upon receipt of an invoice therefor, together with interest thereon at the maximum rate permitted by law.

4. Owner's Insurance. Owner, at its sole cost and expense for the duration of this Agreement, shall maintain or cause to be maintained the following insurance:

a. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(i) Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

(ii) Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 (any auto).

(iii) Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

b. Minimum Limits of Insurance. Owner shall maintain policy limits of no less than:

(i) General Liability: \$10,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any specific project/location or the general aggregate limit shall be twice the required occurrence limit.

(ii) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

(iii) Worker's Compensation and Employers Liability: Worker's Compensation limits as required by the Labor Code and Employers Liability limits of \$1,000,000 per accident.

c. Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be declared to and reasonably approved by the City.

d. Other Insurance Provisions. The policies shall contain, or be endorsed to contain, the following provisions:

(i) General Liability and Automobile Liability Coverage.

A. The City, its officers, officials, employees, agents and volunteers are to be covered as an additional insured in respect to liability arising out of activities performed by or on behalf of Owner; products and completed operations of Owner; premises owned, occupied or used by Owner; or automobiles hired or borrowed by Owner. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.

B. Owner's insurance coverage shall be primary insurance in respect to the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of Owner's insurance and shall not contribute to it.

C. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.

D. Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(ii) Worker's Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by Owner for the City.

(iii) All Coverages. Each insurance policy required by this Section 4 shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days' prior written notice by mail has been given to the City.

e. Acceptability of Insurers. Insurance is to be placed with insurers with a Best Insurance Guide rating of no less than A:VII.

f. Verification of Coverage. Owner shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this Section 4. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete certified copies of all required insurance policies, at any time.

g. Blanket Coverage. Any insurance required to be maintained by Owner may be taken out under a blanket insurance policy or policies covering other premises or properties, and other named insureds in addition to the parties hereto; provided, however, that any such policy or policies of blanket insurance, or supplemental written certification from the insurers under such policies, shall specify therein the amount of insurance allocated to the coverage required under this Agreement (except that no such allocation shall be required if coverage is provided on a "blanket limit" basis) and provided further, that in all other respects, any such blanket policy shall comply with the other provisions of this Agreement.

5. Quitclaim Deed. Following receipt of all necessary approvals, City shall promptly thereafter execute a quitclaim deed to Owner conveying all of City's right, title and interest under the 1957 MacDonald Deed to Owner (the "Quitclaim"). Following execution by City, City shall promptly thereafter record the Quitclaim in the Contra Costa County Recorder's Office at Owner's expense.

6. 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.

7. Indemnification by Owner. Owner, for itself, its successors, agents, contractors and employees, hereby agrees to hold harmless, defend (with counsel selected by Owner and reasonably approved by City) and indemnify the City, its officers, City Council members, employees and agents (all of the above hereinafter collectively known as "Indemnitees"), from and against all claims, cause of actions,

proceedings, losses, damages, liability, cost, and expense (including, without limit, any fines, penalties, judgments, litigation costs, attorney's fees and consulting, engineering and construction costs) for actual loss of or damage to property and for injuries to or death of any person (including, but not limited to, the property and employees of each party) ("Liability") arising from Owner's performance of its obligations under this Agreement, or otherwise caused by, or alleged to have been caused by, in whole or in part, any act or omission to act, negligent or otherwise, of Owner, its officers, agents, contractors or employees in connection with this Agreement, except to the extent the Liability was caused by the negligent acts or willful misconduct or criminal acts of the City, its officers, City Council Members, employees, contractors or agents.

8. Recording. This Agreement shall be recorded in the Contra Costa County Recorder's Office by Owner at Owner's expense and shall constitute notice to all successors and assigns of the title to the Property of this obligation.

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

10. Agreement Binding. This Agreement supersedes all prior maintenance agreements and obligations executed by and between Owner and City regarding the Las Trampas Culvert and the San Ramon Culvert, including, without limitation, the Parking Structure Culvert Maintenance Agreement, and the Horseshoe Parcel Culvert Maintenance Agreement, which agreements are hereby terminated and of no further force or effect. The obligations herein undertaken shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

11. 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.

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SIGNATURES APPEAR ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have hereto set their signatures as of the date first above written.

CITY

CITY OF WALNUT CREEK, a
municipal corporation

By: _____
Kristina Lawson
Mayor

Suzie Martinez
City Clerk

Reviewed by: _____
Steven Mattas
City Attorney

OWNER

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: _____

Name: _____

Title: _____

EXHIBIT A-1 TO CULVERT MAINTENANCE AGREEMENT LEGAL DESCRIPTION

All that certain real property, situated in the State of California, County of Contra Costa and City of Walnut Creek, being a portion of the Rancho Canada Del Hambre Y Las Bousas, Southern Part, described as follows: All of Parcels 1, 2, 3, 4, 5, 7 and 9 as said parcels are shown on Record of Survey RS 3410, filed on April 14, 2010, as Document No. 10-73526, in Book 142 of Licensed Surveyors' Maps at Page 34 in the Official Records of Contra Costa County.

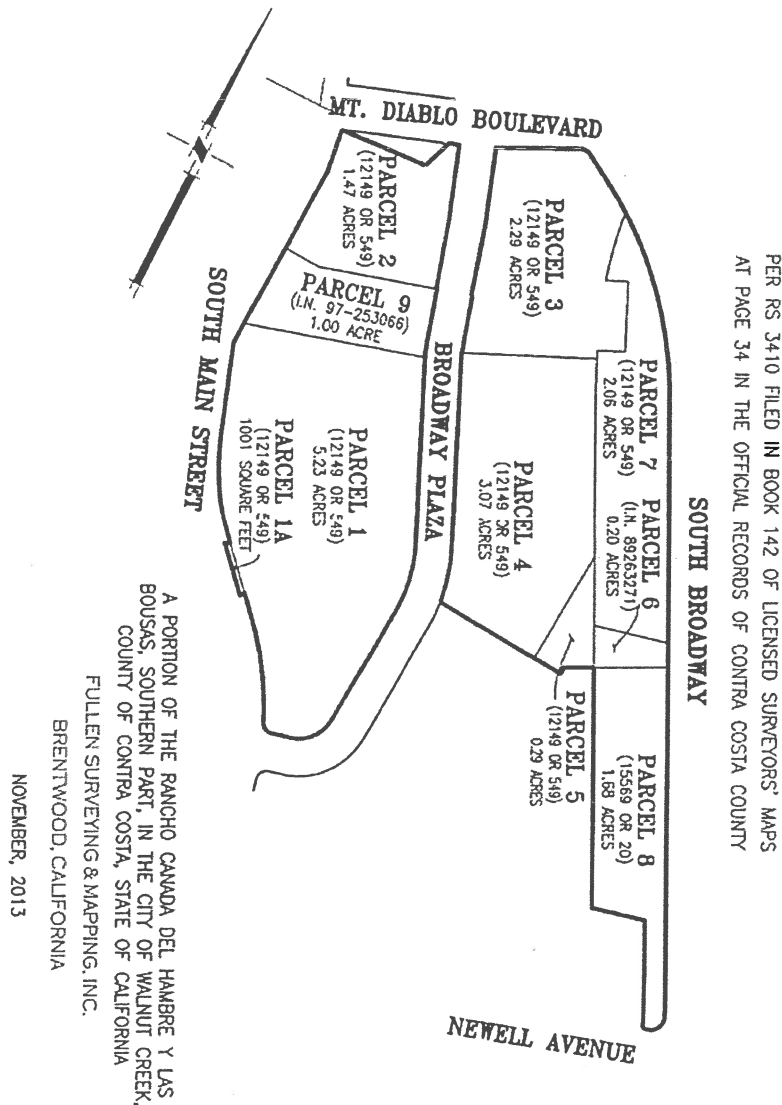


EXHIBIT A-2 TO CULVERT MAINTENANCE AGREEMENT
SITE PLAN

