

LICENSE AGREEMENT

TECOLOTITO CREEK (The Village at Los Carneros)

THIS LICENSE AGREEMENT (“**Agreement**”) is made and entered into on the date last written below, by and between the SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a dependent special district of the County of Santa Barbara (hereinafter called "**District**"), and THE VILLAGE AT LOS CARNEROS MASTER HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation (hereinafter called "**Licensee**").

RECITALS

WHEREAS, Licensee has granted to District an Access and Maintenance Easement (attached hereto as Exhibit A) for flood control and drainage, access, and maintenance purposes; and

WHEREAS, said Access and Maintenance Easements are located on the Property, defined below, which is owned by Licensee; and

WHEREAS, the Access and Maintenance Easements prohibit Licensee from performing any act or use that interferes with or impairs District’s easement rights, which includes limitations on physical alterations to the surface of the easement areas and the construction of permanent buildings or structures;

WHEREAS, Licensee desires to use said easement area for certain access and improvements described herein that impact the easement and its use by District, and the parties hereto desire for this Agreement to set forth the terms and conditions for the uses and obligations within the easement area and to maintain the District’s priority over other uses for flood control and drainage purposes and District’s right to restrict access to the easement for other uses; and

WHEREAS, this Agreement is not intended to entitle Licensee to undertake any construction of improvements in the easement area without complying with all permitting required by the local land use authority, the City of Goleta, and complying with environmental review requirements pursuant to CEQA related to said permitting requirements; and

NOW, THEREFORE, for good and valuable consideration and in further consideration of the faithful performance and observance by Licensee of all of the terms and conditions herein contained, District and Licensee agree as follows:

AGREEMENT

1. Licensee Rights

District hereby grants to Licensee a personal, revocable, and non-exclusive right (the "License") to access the Property for the purposes of constructing, reconstructing, maintaining and using for pedestrians and bicycles uses (a) the Access Road (as defined below), together with the necessary appurtenances thereto, and (b) the Trail (as defined below), together with the necessary appurtenances thereto, and (c) the Turnaround (as defined below), together with the necessary appurtenances thereto.

2. Definitions

(a) The Property

As used in this Agreement, "the Property" is identified as being within Assessor Parcel Numbers 073-330-028 & -029 and shall refer to that portion of the Tecolotito Creek (the "Creek") embankment and surrounding property shown on Exhibit "A" and detailed in Exhibit "B", both attached hereto and incorporated herein by this reference, which is subject to an easement in favor of District for flood control and drainage purposes. Licensee is the owner of fee title to the land on which the Property is located.

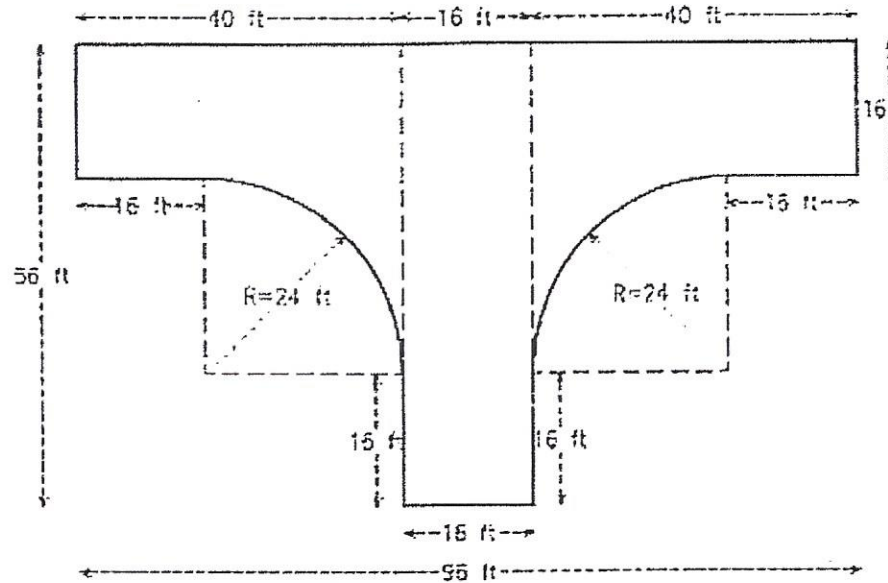
(b) The Access Road

As used in this Agreement, "the Access Road" shall refer to that certain portion of the Property depicted on Exhibit "B" as the "FLOOD CONTROL ACCESS" which may include, subject to District's approval and inspection as provided in Section 11, an all-weather minimum sixteen feet (16') wide road capable of supporting twenty (20) tons, signs, drainage facilities, barrier fencing, gates and landscaping.

(c) The Turnarounds

As used in this Agreement, "the Turnarounds" shall refer to those certain locations on the Property (detailed below) also depicted on Exhibit "B" as "TURNAROUND" which may include, subject to District's approval and inspection as provided in Section 11, an all-weather surface capable of supporting twenty (20) tons, signs, drainage facilities, and gates.

Hammerhead Style Turnaround



(d) **The Trail**

As used in this Agreement, "the Trail" shall refer to that certain portion of the Property depicted on Exhibit "B" as "PEDESTRIAN TRAIL." which may include, subject to District's approval and inspection as provided in Section 11, a decomposed granite- surface trail, signs, drainage facilities, barrier fencing, and landscaping.

3. **Title of District**

Licensee hereby acknowledges District's easement rights in and to the Property and agrees never to assail or to resist said rights. Licensee agrees that Licensee has not, nor will it obtain any right or claim to the use of the Property that is in conflict with District's easements rights beyond those explicitly granted in this License.

4. **Term**

This License shall continue for an indefinite term, to terminate only by District with sixty (60) days written notification to Licensee.

5. **Primary Use of Property**

The Property includes the Creek, which is used for flood control purposes. Use of the Property may be subject to limitations which may be imposed by the United States Army Corps of Engineers ("USACE"). Underground utilities or facilities may already be in place and it is anticipated that in the future, additional utilities or facilities may be constructed or installed on the Property. Any and all rights granted or implied by this License shall be subordinate to the uses just mentioned, as well as to all other uses of the Property by, or permitted by, District.

Licensee acknowledges that the use just described constitutes the primary use of the Property and that Licensee's use of the Access Road and the Trail pursuant to this Agreement is secondary and subordinate to said primary uses. Licensee shall not use the Trail in any manner that will materially interfere with or impair said primary use of the Property. All rights granted hereunder are subject to all existing and future rights, rights of way, reservations, franchises, and licenses in the Property, regardless of who holds it, including District's right to use the Trail for emergency or maintenance access or any other purpose.

6. **Suspension or Limitation of Use**

District shall have the right to temporarily close or to limit access to the Access Road and the Trail by Licensee and the general public for a period of time for protection of public safety or for the construction, installation, operation, maintenance or repair of other facilities on the Property. Should such suspension or limitation be necessary, District shall barricade the area with yellow caution tape for the duration of the temporary closure or limited access, and in cases of emergency maintenance, repairs, or other unforeseen emergency conditions which require immediate closure of the Access Road or Trail.

District shall not be held responsible or liable for damage or removal of any fences, gates, asphalt or concrete paving, landscaping, or other which may be placed, installed, repaired, or constructed as part of the Trail when District finds it necessary to accomplish work for the maintenance, repair, reconstruction or alteration of District's property. However, District will exercise reasonable care to minimize adverse impacts of such work.

7. **Revocation**

In the event, in the sole discretion of District, the primary uses of the Property by District or District's permittees require some permanent use of a portion or portions of the Property which, by nature thereof, precludes Licensee's use thereof, District may, upon sixty (60) days prior notice, revoke this License in whole or in part as to the area District deems necessary for such permanent primary use. District shall supply Licensee with a map or drawing identifying the area(s) as to which this License is so revoked.

8. **Maintenance and Litter**

Licensee shall maintain the Access Road, Trail and Turnaround in a clean, safe, and presentable condition free from graffiti, waste, litter and other items resulting from

public access to the Property. As used in this section, the term "litter" shall include, but not be limited to, paper, garbage, refuse, building materials, trimmings, and other items that detract from the neat and tidy appearance of the Property.

Licensee agrees to keep the Trail free from weeds and other vegetation, and to abate weeds to local fire district standards. District agrees to perform weed abatement on the flood channel portion of the Property.

9. **Indemnification**

Licensee shall indemnify, save, protect, defend, and hold harmless District, its Boards, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of or connected with Licensee's operations and performance, or Licensee's and the public's use of the Access Road and the Trail. It is the intent of this paragraph that Licensee shall so indemnify, save, protect, defend and hold harmless District to the fullest extent permitted by law. Licensee shall notify District immediately in the event of any claim, accident or injury arising out of or in connection with this Agreement.

10. **Insurance Requirements**

(a) **Workers' Compensation**

Licensee warrants that it has insurance for workers' compensation coverage and agrees that its employees providing services or performing duties under this Agreement will be covered by Licensee's insurance program for all injuries arising out of or occurring in the course and scope of their employment.

(b) **General and Automobile Liability**

The Licensee shall maintain insurance for general and automobile liability coverage for the period covered by this Agreement in the amount of at least \$5,000,000 per occurrence combined single limit coverage. Such coverage shall include, but shall not be limited to, protection against claims arising from the activities contemplated under this License. The District, its officers, agents, and employees shall be named as additional insured. The Licensee shall furnish the District with a Certificate of Insurance and endorsements effecting coverage by the contract.

11. **Approval and Inspection of Work**

Licensee shall not perform any construction, reconstruction, or any other work within the Access Road the Trail and Turnaround without first obtaining approval in writing of said work from District. In seeking these approvals, Licensee shall furnish to District a complete description and plans of the work proposed to be performed. In performing work approved by District, Licensee shall comply with all terms, conditions, and requirements imposed by District and not deviate in any material manner from the description and plans approved by District without first obtaining additional approval in writing.

Licensee shall design, construct and maintain all facilities to provide continuous unobstructed vehicle access by the District to the Access Road, at designated access points. District has disclosed to Licensee that the primary use of the Access Road area will include vehicles and equipment for construction and routine maintenance, etc. of the flood control facilities and creek. In addition, District's use of tracked equipment may leave the Access Road surface in an uneven and rough condition. Licensee agrees to assume all responsibility for the repair and maintenance of any damage that may be caused by the use of such vehicles and equipment.

Licensee shall not be required to obtain District's prior written approval for the performance of routine maintenance or emergency repairs of the Access Road or the Trail. As used in this section, the term "routine maintenance" refers to work that (i) does not alter the original condition of improvements previously approved in writing by District and (ii) is required to prevent deterioration of said improvements. As used in this Section, the term "emergency repairs" refers to repairs that (i) do not alter the original condition of improvements previously approved in writing by District, and (ii) are necessary to protect the safety of the public and others. Licensee shall consult District at least seven (7) days before Licensee performs any major maintenance operations. Work shall be done in such a manner that District shall at all times be able to use and gain access to its facilities.

All work performed by Licensee under this section shall be subject to inspection by District.

12. **Government Approvals and Compliance with Laws**

For any construction of improvements or alterations by Licensee in, on, or about the easement area, Licensee hereby represents and agrees that it shall obtain all necessary permits and/or other governmental approvals from the appropriate governmental agencies, including the City of Goleta as the local land use authority, and comply with all laws with respect to the approval of said improvements or alterations at its sole expense. Issuance of all required permits and governmental approvals is a precondition of any work that may be performed in connection with this Agreement. Execution of this Agreement in no way constitutes approval by District for Licensee's activities, and nothing in this Agreement shall be construed as an entitlement, permit, or clearance. Failure to comply with all conditions of said permits and approvals shall constitute a material breach of this Agreement.

13. **Notices**

Except where otherwise specifically provided, all notices under this License and in connection herewith and all statements shall be addressed and delivered as follows:

DISTRICT: Santa Barbara County Flood Control and
Water Conservation District
130 E. Victoria Street, Suite 200
Santa Barbara, CA 93101
Attn: Deputy Director
(805) 568-3000

LICENSEE: The Village at Los Carneros Master Homeowners Association
2301 Rosecrans Avenue, Suite 1150
El Segundo, California 90245-4976
Attn: President
(310) 546-5781

or at such other address as the respective party may designate in writing. Any notice may be given by use of the United States postage prepaid certified mail, overnight courier, email if receipt is confirmed or by personal delivery. The date of mailing, or in the event of personal delivery the date of delivery, or in the case of email, the date receipt is confirmed, shall constitute the date of service.

14. **Assignment**

No rights of Licensee hereunder shall be transferred or assigned unless the written consent of District is first secured; provided, however, that Licensee shall not be required to obtain District's consent to a transfer to (i) a successor owner of the Licensee's Land or (ii) an association (as defined in California Civil Code Section 4080) formed to manage and maintain a common interest development which include the Property. With those exceptions, this License and each and all of the covenants herein contained shall inure to the benefit of and be binding upon the successor and assigns of the respective parties hereto.

15. **Restricted Use**

The rights granted hereunder are for construction, reconstruction, maintenance, removal, and use of the Access Road and the Trail, together with the necessary appurtenances thereto. No type of motor-driven vehicle shall be permitted on the Trail, except those of Licensee, District, or District's permittees being used for construction, maintenance, repair, patrol, or public safety purposes. Licensee shall post signs at points of entry to the path to prevent unauthorized access by motor-driven vehicles and shall provide patrols to ensure that such vehicles are prohibited.

16. **Patrol**

Licensee shall provide such patrol service as is necessary to prevent unauthorized use of the Trail, monitor for needed cleanup and maintenance, and to protect the safety of the users of the Trail. Its failure to do so shall constitute a breach of this License and may justify immediate termination of same. Licensee agrees to devote the same standards and levels of public safety patrol to the Trail as it is able to and does devote to its other recreational facilities.

17. **Damage to Property**

It is understood and agreed by and between the parties hereto that the property is subject to sliding, erosion, subsidence, and flooding, and that District is under no obligation to maintain the Property or repair any damage resulting from slide erosion, subsidence, or

flooding. In the sole discretion of District, District may make repairs to any damage that affects the integrity of the flood control facilities. It is also agreed and understood that the Licensee is responsible for maintaining the surface of the Access Road and the Trail at all times including after maintenance or other activities by District which may make the surface of the Access Road or the Trail hazardous or undesirable for use by the public. In the event of any lesser damage, Licensee shall perform such maintenance or repair as Licensee may deem necessary for proper and safe operation of the Access Road and the Trail.

18. **Pollution**

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

No hazardous materials shall be handled by Licensee at any time upon the Property. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or, from the Property caused by Licensee's employee contractors and agents, Licensee, at its expense, shall be obligated to clean all the property affected thereby, whether owned or controlled by District or any third person, to the satisfaction of District (insofar as the property owned or controlled by District is concerned) and any governmental body having jurisdiction therefor.

To the extent permitted by law, Licensee shall indemnify, hold harmless, and defend District and such holders of user rights against all liability, cost, and expense (including, without limitation, any fines, penalties, judgments, litigation costs, and attorneys' fees) incurred by District and such other users as a result of Licensee's breach of this section or as a result of any such discharge, leakage spillage, emission or pollution.

19. **Signs**

Licensee shall maintain existing signs and install appropriate informational and warning signs. Licensee shall also post any other signs required by law, recognizing that District utilizes pesticides, herbicides and other dangerous chemicals for the purpose of maintaining the Levee as a flood control improvement.

20. **Trail Improvement Maintenance or Modification**

Licensee shall maintain at its expense all Trail improvements, including, without limitation, surfacing, culverts, gates, signs, fences, bollards, and landscaping. It is acknowledged that all impacts of the construction and operation of the Trail cannot be foreseen at the present time. District may require changes to the Trail improvements or changes to operation of the Trail, and Licensee agrees to make such changes to the Trail improvements or operations to District's satisfaction.

21. **Fencing**

THERE SHALL BE NO FENCING FROM TWELVE (12") INCHES OUTSIDE OF DISTRICT'S EASEMENT AREA. Licensee agrees to maintain, at its expense, all fencing on Property installed by District or Licensee. Neither District nor Licensee shall be responsible for the maintenance of residential fencing installed by parties other than Licensee.

22. **Vandalism**

Licensee shall, at its own expense, promptly repair all vandalism damage to the Access Road and the Trail improvements.

23. **Graffiti**

Licensee shall, at its own expense, promptly clean, repaint, or remove any graffiti placed by users of the Trail on Trail improvements, the Property, existing or future utilities and fences, walls and bridges adjoining the Property.

24. **Modification**

This License shall be subject to modification or amendment, including expansion of the Trail to additional areas, only by the written, mutual consent of both parties.

25. **Entire Agreement**

It is understood that this document contains the entire Agreement between the parties hereto and all prior understandings or agreements, oral or written, of whatsoever nature regarding the rights hereby granted are superseded by this Agreement and are hereby abrogated and nullified.

26. **Construction**

The parties have negotiated the terms of this Agreement. They have consulted their respective attorneys as needed. The terms of this Agreement reflect this negotiation and the intentions of both parties. These terms shall be interpreted with regard to each party equally.

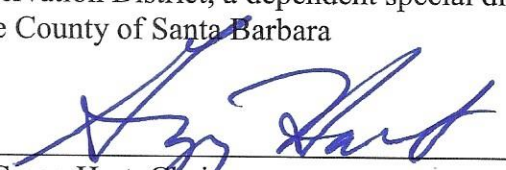
27. **Severability**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this license shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, the parties hereto have executed this License, in duplicate, the day and year last written below.

“District”

Santa Barbara County Flood Control and Water Conservation District, a dependent special district of the County of Santa Barbara

By: 
Gregg Hart, Chair
Board of Directors of the Santa Barbara County Flood Control and Water Conservation District

Dated: 12-8-20

ATTEST:
MONA MIYASATO, Clerk of the Board and Ex Officio Clerk of the Santa Barbara County Flood Control and Water Conservation District

By: 
Deputy

APPROVED:

Scott McGolpin
By: _____
Scott D. McGolpin, Director
Public Works Department

APPROVED:

By: Thomas Fayram
Tom Fayram, Deputy Director
PW/Flood Control & Water Conservation


APPROVED:

Ray Aromatorio
By: _____
Ray Aromatorio, ARM, AIC
Risk Manager

APPROVED:


By: Carlo Achdjian
Carlo Achdjian, Manager
Real Property Division

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

By: 
Scott Greenwood
Deputy County Counsel

“Licensee”

The Village at Los Carneros Master Homeowners Association, a California nonprofit mutual benefit corporation

By: 
Name: Joel Grusinski
Title: Board President
Dated: NOV 11, 2020