

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Stony Point Flats, LP
30 Meyers Court
Novato, CA 94947

Portion of APN 125-521-007

DRAFT Grant of Easement to Stony Point Flats, LP

This Easement Agreement ("Agreement") is made by and between the **Sonoma County Water Agency**, a body corporate and politic, organized and existing under and by virtue of the laws of the State of California (herein after referred to as the "Sonoma Water") and Stony Point Flats, LP, A California Limited Partnership (herein after referred to as the "Grantee").

R E C I T A L S

WHEREAS, Sonoma Water is the owner of certain real property situated in Sonoma County, California described as follows:

Being the real property as described in that certain Grant Deed recorded September 19, 1978 in Book 3455, beginning at page 130, of Official Records of Sonoma County, California, Sonoma County Assessor's Parcel Number (A.P.N.) 125-521-007 (hereinafter referred to as the "Sonoma Water Property"); and

WHEREAS, Grantee is the owner of certain adjacent real property situated in Sonoma County, California described as follows:

Being the real property described in that certain Grant Deed recorded December 3, 2021, as Document 2021-132348, Official records of Sonoma County, California, Sonoma County Assessor's Parcel Number (A.P.N.) 125-521-008 (hereinafter referred to as "Grantee's Property"); and

WHEREAS, Grantee desires to obtain a permanent easement over portions of the Sonoma Water Property for the purposes of installation of Storm Drain Outfall improvements required for the Stony Point Flats Apartments as shown upon the improvement plans entitled: Stony Point Flats, APN 125-521-008, 2268 Stony Point Road, Santa Rosa as said Improvement plans for said Storm Drain Improvements as approved for permitting and construction by the City of Santa Rosa Building Department, hereafter the "Project," described as follows:

That portion of the hereinabove described real property more particularly described in Exhibit "A" and shown for reference in Exhibit "A-1 attached hereto, and by this

reference hereby made a part of this Agreement (hereinafter referred to as “Easement Area”).

NOW, THEREFORE, for good and valuable consideration and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, Sonoma Water and Grantee covenant and agree as follows:

A G R E E M E N T

1. Grant of Non-Exclusive Easement. Sonoma Water hereby grants to Grantee a non-exclusive easement over Easement Area of the nature, character, and extent, and subject to the conditions, set forth in this Agreement. The easement granted herein shall be appurtenant to Grantee’s Property.

2. Description of Easement over Sonoma Water Property. The easement granted over the Easement Area is a perpetual easement for the purpose of laying down, constructing, reconstructing, removing, replacing, repairing, maintaining, operating, and using the portion of the Project to be located in, upon, and under Sonoma Water property; in, under, along, and across the Easement Area; and the right at all times to enter in, over, and upon said Easement Area for all purposes connected with the laying down, constructing, reconstructing, removing, replacing, repairing, maintaining, operating, and using the portion of the Project to be located on Sonoma water Property; provided, however, that said use does not materially damage or restrict Sonoma Water’s use of the Sonoma Water Property or the current improvements existing thereon in any way. Sonoma Water reserves the right to install, construct, operate, and maintain both its existing improvements and any future improvements on the Sonoma Water Property, subject to the Grantee’s use of the Easement Area as provided in this Agreement. This easement is granted on the condition that Grantee’s use of the easement does not damage or restrict Sonoma Water’s full use of existing Sonoma Water improvements in any way. The grant of easement herein is subject and subordinate to the rights of Sonoma Water and its successors and assigns, to use the Sonoma Water Property in the performance of its governmental and proprietary functions.

3. Term. The easement granted in section 2 above shall continue indefinitely so long as Grantee is in compliance with the terms and conditions of this Agreement.

4. Construction on Sonoma Water Property. Sonoma Water also grants a Revocable License to Grantee for construction activities required for construction of the Project, alteration(s) of the Project or Sonoma Water Property within the Easement Area, or for use of adjoining Sonoma Water Property for any other purposes relating to Project, subject to Grantee’s compliance with Sonoma Water’s comments upon Project plans; said comments are incorporated within the Project plans. Grantee has submitted plans to the Sonoma Water and Sonoma Water has approved those plans for the Project. Grantee shall comply with Sonoma Water revisions and remarks.

5. Maintenance of Easement. Grantee understands and agrees that any improvements completed as part of the project will be considered Grantee’s sole property and Grantee shall maintain all Project improvements within the Easement Area at Grantee’s sole cost and expense. Any reconstruction or maintenance activities performed by Grantee and related to Grantee’s use of the

easement shall not interfere with the Sonoma Water's continued use of the Sonoma Water's Property or the Easement Area. Grantee shall not materially alter or reconstruct the Project without first obtaining Sonoma Water's written approval of plans for such alteration or reconstruction and shall obtain a revocable license as specified in Section 4 above.

6. Waste or Nuisance; Sonoma Water's Rights in Property. Grantee shall not commit or suffer: (a) any waste or nuisance on the Easement Area; (b) any action or use of the Easement Area which interferes or conflicts with the existing use of the Easement Area or Sonoma Water Property by Sonoma Water or any authorized person; or (c) any action on the Easement Area in violation of any law or ordinance. Except as otherwise provided in this Agreement, Grantee shall not undertake or permit any activity or use on the Easement Area that is inconsistent with the purpose of this Agreement, including, without limitation, the following activities: (a) constructing, reconstructing, replacing, repairing, or maintaining any building, structure, utilities, or other improvement other than those which are required by the construction, operation, and maintenance of Project; (b) altering the surface or contour of the land in any manner not consistent with the Project, including, but not limited to, excavating or removing soil, sand, gravel, rock, sod, trees, shrubs, plants or vegetation; (c) degrading or eroding the soil or polluting any surface or sub-surface waters; (d) dumping, accumulating, or storing trash, ashes, garbage, waste, junk, non-operative vehicles, or other materials; (e) damaging the integrity of the surface beyond normal wear and tear; (f) exploring for or developing and extracting minerals and hydrocarbons by any mining method, surface or otherwise; (g) parking any vehicle; and (h) placing or leaving any personal property of Grantee or Grantee's tenants, contractors, agents, or invitees.

7. Non-Liability of Sonoma Water; Indemnity. Sonoma Water and its officers, agents, and employees shall not be liable to Grantee or any third party for any injury, loss, or damage arising out of or in connection with the use by the Grantee or the public of the easement granted herein. Grantee agrees to defend, indemnify, hold harmless, and release Sonoma Water, and its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses of every kind and nature whatsoever that may be asserted by any person or entity, including Grantee, arising out of or relating in any way, directly or indirectly, to the use by the Grantee or the public of the easement granted herein, whether or not there is concurrent negligence on the part of the Sonoma Water. Grantee agrees to compensate Sonoma Water for any damage to Sonoma Water property as a result of the construction, operation, or maintenance of said Project.

8. Relocation. If Sonoma Water determines, in its sole discretion, it requires Grantee to relocate any of its improvements to enable Sonoma Water to use the Sonoma Water Property in the performance of its governmental and proprietary functions, or if future laws or regulations require a greater separation between the Project improvements and any Sonoma Water improvements, Grantee shall relocate the Project improvements accordingly at its sole cost and expense, provided however, Sonoma Water shall provide an alternate Easement Area reasonably acceptable to Grantee and within Sonoma Water's Property for the relocation. Sonoma Water shall have no obligation to acquire new or additional property for Grantee's Project improvements.

9. Enforcement. If through inspection or otherwise Sonoma Water determines that Grantee is in violation of the provisions of this Agreement or that a violation is threatened, Sonoma Water shall give written notice to Grantee of such violation and demand corrective action sufficient to

cure the violation. If Grantee fails to cure the violation within thirty (30) days after receipt of notice thereof from Sonoma Water, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Sonoma Water may bring an action to enforce the provisions of this Agreement, enjoin the violation, recover damages and enforcement costs for the violation, and require restoration of the easement to the condition that existed prior to the violation. If Sonoma Water reasonably determines that circumstances require immediate action to prevent or mitigate a violation or threatened violation of the provisions of this Agreement that would result in damage to the Sonoma Water or third parties, Sonoma Water may pursue its remedies under this paragraph without prior notice to Grantee and without waiting for the period for cure to expire.

10. Enforcement Discretion. Enforcement of the provisions of this Agreement shall be at the discretion of the parties to this Agreement, and any forbearance by a party to exercise its rights under this Agreement in the event of any breach of any provision of this Agreement by the other party shall not be deemed or construed to be a waiver by the party of such provision or of any subsequent breach of the same or any other provision of this Agreement or of any of the party's rights under this Agreement. No delay or omission by a party in the exercise of any right or remedy upon any breach by the other party shall impair such right or remedy or be construed as a waiver.

11. Access and Control. Except as otherwise expressly provided in this Agreement, Sonoma Water retains the exclusive right of access to and control over the Easement Area. Nothing contained in this Agreement shall be construed as precluding Sonoma Water's right to grant access to third parties across the Easement Area, as long as such actions do not interfere with the Grantee's reasonable use hereunder.

12. Successors. This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors, heirs, assigns and transferees.

13. Amendment. If circumstances arise under which an amendment or modification of this Agreement would be appropriate, Grantee and Sonoma Water shall be free to jointly amend this Agreement. Any such amendment shall be recorded in the Office of the Sonoma County Recorder.

14. Notices. Any notice, demand, request, approval, or other communication that either party desires or is required to be given under this Agreement shall be in writing and may be given by personal delivery or by mail. Notices, demands, requests, approvals, or other communications sent by mail should be addressed as follows:

Sonoma Water:	Sonoma County Water Agency 404 Aviation Boulevard Santa Rosa, CA 95403
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Grantee:	Stony Point Flats, LP A California limited partnership 30 Meyers Court
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And, when so addressed, shall be deemed given upon deposit in the United States Mail, registered or certified, return receipt requested, postage prepaid. In all other instances, notices, demands, requests, approvals, or other communications shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the persons to whom notices, demands, requests, approvals, or other communications are to be given by giving notice pursuant to this section.

15. Applicable Law and Forum. Interpretation and performance of this Agreement shall be governed by California law and any action to enforce the provisions of this Agreement, or the breach thereof shall be brought and tried in the County of Sonoma.

16. No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

17. Integration. This Agreement is the final and complete expression of the agreement between the parties and any and all prior or contemporaneous agreements written or oral are merged into this instrument.

18. Captions. The captions in this Agreement have been included solely for convenience of reference. They are not a part of this Agreement and shall have no effect upon its construction or interpretation.

19. Survival of Agreement. This Agreement, including all representations, warranties, covenants, agreements, releases and other obligations contained herein, shall survive the closing of this transaction and recordation of any deed or other document related hereto.

20. Title to Sonoma Water Property. It is understood that the Grantee did not provide a title report or obtain title insurance for the easement rights to be acquired from the Sonoma Water. In addition to any indemnification granted under Section 7 above, the Grantee further agrees to defend, indemnify, hold harmless, and release Sonoma Water, and its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, including Grantee, relating to any third party rights that may exist on Sonoma Water Property that would be damaged by Grantee's Project. The Sonoma Water provides no warranty, expressly or implied, that Sonoma Water has sole right to grant the necessary easement rights to Grantee. Grantee agrees to indemnify Sonoma Water from and against any claims or liabilities arising from construction, operation, or maintenance of said Project that are asserted by third parties claiming property rights in the Easement Area.

IN WITNESS WHEREOF, Sonoma Water and Grantee have executed this Agreement as set forth below.

Stony Point Flats, LP, a California Limited Partnership:

By: Phoenix Development Company of Minneapolis, LLC, a Minnesota limited liability company

Its: Administrative General Partner

By: _____ Dated: _____
Loren E. Brueggemann, President

By: IH Stony Point Flats Santa Rosa LLC, a California limited liability company

Its: Managing General Partner

By: _____ Dated: _____
Philip Wood, President

Sonoma County Water Agency:

Executed by the Sonoma County Water Agency this _____ day of _____,
20_____, pursuant to authority granted by Agenda Item No. _____ dated
_____, 20____:

By: _____
Grant Davis, General Manager

Approved as to Form:

By: _____ Date: _____
Deputy County Counsel

Exhibit “A”

Insert Legal Description (to be supplied by Grantee)

Exhibit “A-1”

Insert Plat of Legal Description (to be supplied by Grantee)