

Attachment 3

LAND EXCHANGE AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2024 by and between the MARIN MUNICIPAL WATER DISTRICT, a municipal water district, hereinafter referred to as “District,” and STEPHENS PROPERTIES, INC., a California corporation, and THE STEPHENS FAMILY 1996 TRUST DATED JANUARY 23, 1996, hereinafter collectively referred to as “Stephens.”

RECITALS

- A. In 1930, District was granted certain real property rights as set forth in that certain “Indenture” shown in Exhibit A, attached and incorporated herein as if fully set forth. In 1985, District quitclaimed a right-of-way to Stephens’ predecessor in interest as set forth in that certain Quitclaim Deed shown in Exhibit B, attached and incorporated herein as if fully set forth. As a result, the real property now held by District includes fee title to a lot containing approximately 7,500 square feet of land, one 100,000-gallon redwood water tank and one 200,000-gallon redwood water tank which were constructed by District in 1978 and 1958, respectively, and which are currently existing and being operated by District. The lot is described by the Marin County Assessor as APN 186-520-10, commonly referred to as the Hind Tank Lot. District’s water tanks are connected to its water system by a pipeline running to a main line located in Margarita Drive. Said pipeline is depicted in Exhibit B, labeled “Active 10’ R/W.” The foregoing Hind Tank Lot and associated rights owned by District are collectively hereinafter referred to as “Property A,” and the water facilities located on the lot hereinafter referred to as “the Existing Facilities.”
- B. District and Stephens disagree as to the scope of District’s rights of access to the Hind Tank Lot and the Existing Facilities, which disagreement will become moot when the land exchange anticipated in this Agreement is completed. In the event, however, that the land exchange is not completed for any reason, it is the interest of the parties to preserve each party’s position unaffected by any descriptions that may be set forth in this Agreement and therefor any descriptions set forth herein shall not be used as evidence against the other party in the event of a future legal proceeding regarding the scope of the District’s access rights and are included solely for the purpose of describing the details of the proposed land exchange transaction herein set forth.
- C. Stephens owns certain real property commonly referred to as 300 Margarita Drive, San Rafael, which is comprised of three parcels of land described by the Marin County Assessor as APN Nos. 186-520-06, 186-520-09 and 186-520-11 (hereinafter referred to as “Stephens’ Property”), a portion of which Stephens proposes to convey to District in exchange for a quitclaim and release of Property A. The proposed exchange property is

described in and depicted on Exhibit C, and includes a parcel of land hereinafter referred to as “Property B,” and a non-exclusive right-of-way (described in Exhibit C as “Pipeline & Access Easement”) for the installation and maintenance of a pipeline, and for ingress to and egress from said Property B, hereinafter referred to as “New Easement.” Exhibit C is attached and incorporated herein as if fully set forth.

- D. Given the age of the redwood tanks located on the Hind Tank Lot, District is currently planning a tank replacement project (“Hind Tank Replacement Project” or “Project”) and in conjunction with this plan District and Stephens desire the relocation of the Existing Facilities from Property A to Property B and New Easement, to the mutual benefit of District and Stephens. Stephens is also to benefit from the elimination of the visual impacts of the Existing Facilities to Stephens’ properties, and the acquisition of the described Hind Tank Lot for future use.
- E. District and Stephens agree to effect the said relocation by exchanging all of the District’s right, title and interest in Property A for Property B and New Easement.

NOW, THEREFORE, IT IS MUTUALLY UNDERSTOOD AND AGREED as follows:

1. **RECITALS.** The Recitals are hereby incorporated herein and made part of this Agreement.
2. **DUE DILIGENCE PERIOD.** District shall have a period of six months from the date of full execution of this Agreement to conduct its due diligence on Property B, including but not limited to geological assessment and sampling, conducting biological surveys, completion of a phase I Environmental Assessment, conducting site review and land surveys, all as necessary for District to determine, in its sole discretion, whether Property B is appropriate for the proposed Hind Tank Replacement Project. If after six months the District determines that Property B is appropriate for the proposed Hind Tank Replacement Project, then District will provide written notice prior to expiration of said six month period and the parties will proceed with the land exchange upon all the terms and conditions contained herein. If District determines in good faith that Property B is not appropriate for the proposed Project, then District will notify Stephens prior to the expiration of the six month period that it will not proceed with the land exchange, and the parties shall have all of the rights and interests in place prior to entering into this Agreement.
3. **EQUAL VALUE TRANSACTION.** District and Stephens each agree that this exchange of real property and the work to be performed by District described herein is an equal value transaction with neither party being damaged in the after condition. Consequently, except as specifically set forth herein, this transaction does not provide for any monetary exchange between the parties.

4. **DISTRICT WORK.** After obtaining the right to possession of Property B and use of the New Easement, as provided in Paragraph 12, herein below, District will commence construction of the Hind Tank Replacement Project including the additional items set forth herein. District shall diligently pursue construction of the Project, which District will endeavor to complete within two years. The location(s) of construction staging connected with the construction on Property B shall be determined by mutual agreement of the parties. The following are said additional items to be completed as part of District's work:

A. Upon completion of the new water tanks on Property B and connection of same to the District water system, District agrees to demolish the Existing Facilities on Property A to bare earth with all materials, waste, and debris resulting from the demolition to be completely removed from and hauled off of Property A and Stephens' Property. The existing water lines will be abandoned in place. Any and all trenches and excavations resulting from said demolition shall be filled with compatible compacted soil. The site (Hind Tank Lot) shall be left clean and level with the surrounding grade.

B. As part of and in connection with the Project, District agrees to install new hydrants on Stephens' Property, Property B, or within the District's New Easement along the driveway as may be required by the San Rafael Fire Department for completion of the Project.

C. The parties understand and agree that there is an existing water service line currently serving existing residences on Stephens' Property. District agrees to install for use by Stephens, its successors and assigns, two new one-inch water services, and to relocate the existing one-inch service (SV-00851) to be connected to the new water pipeline to be installed within the New Easement for a total of three meters and service lines for the purpose of connecting existing residences on Stephens' Property. District will install new service lines from the newly installed water main line to new meter boxes located within District's New Easement along Stephens' driveway. Stephens will be responsible for connecting the service lines to each of the residences, including the payment of the District's standard connection fee for one of the new water service connections prior to receiving new water services. In addition, District agrees to install a one-inch water main tap access at the main only and not a water service line or meter, which may be used for the potential future development of the Hind Tank Lot, subject to issuance of necessary building permits, filing an application with District, installation of necessary water service line and meter and payment of all appropriate fees.

D. District agrees to install a new roadway to and above the existing water tanks on Property A, as designed on ILS Associates, Inc. drawing, dated November 1, 2021, attached as Exhibit D, and incorporated herein as if fully set forth, provided, however, that Stephens will be responsible for the cost of the new roadway beyond that required to provide access to Property B and also provided that Stephens has provided completed engineering and grading plans for this portion of the new roadway, to serve Stephens'

Property, to District within sixty (60) days from full execution of this Agreement to allow District to incorporate the work into District's Project plans and specifications. At such time as District contracts for construction of the Project, District will provide Stephens with a true and correct copy of the contract including the cost for this portion of the roadway construction. Stephens will deposit this amount into Escrow in favor of District within ten (10) days from receipt of the notice of cost from District. If Stephens fails to make this deposit within said ten days, District will have no obligation to complete this portion of the new roadway.

E. District agrees to pay Stephens the amount of \$48,000 for the removal of three (3) existing palm trees near the New Easement that must be removed for the Project and will not be replaced, which amount will be placed in Escrow by District in favor of Stephens prior to the completion of the Project.

F. District agrees to provide screening of the new water tanks on Property B by planting ten 48-inch box Redwood trees between the existing houses on Stephens' Property and Property B. When constructing the Project, District will endeavor to preserve as many existing Redwood trees as possible. The location of the installation of each of the new trees will be mutually agreeable to District and Stephens. District shall be responsible for the installation of the screening trees and an irrigation system. Upon completion of the installation of the screening trees and the irrigation system, the trees and the irrigation system shall become the property of Stephens and responsibility for the operation and maintenance thereof shall pass to Stephens. The water for the irrigation system shall be supplied through one of Stephens' water services.

G. District shall inform Stephens after its new water tanks on Property B and demolition of the Existing Facilities on Property A are complete. District will then install a two-inch lift of asphalt paving on the entire driveway located within the New Easement beginning at Margarita Drive, in accordance with Marin County paving standards.

H. Stephens and District agree that during District's construction of the Project each will cooperate with the other to assure that Stephens or Stephens' invitees, licensees or guests will not unreasonably interfere with District's work hereunder, and District or its employees, contractors, or persons related thereto will not unreasonably interfere with the use and enjoyment of Stephens' Property by Stephens or Stephens' invitees, licensees or guests. Each party will promptly notify the other of such interference and request abatement. District will not be responsible for any delays in construction of the Project due to interference by Stephens or Stephens' invitees, licensees or guests, provided District promptly notifies Stephens of such interference and it is left unabated.

I. District agrees to remove all construction debris and grading spoils resulting from its work in connection with construction of the new water tanks from Stephens' Property.

5. **HOLD HARMLESS.** To the fullest extent permitted by law, District shall indemnify and hold harmless Stephens, its officers, agents, trustees, or employees from and against any third party claims, damages, losses and expenses, of whatever kind or nature, including attorneys' fees, arising out of or resulting from (1) an occurrence on Property A during the District's ownership thereof, and/or (2) an occurrence resulting from the acts and/or omissions of District, its officers, consultants, employees, servants, and/or contractors, during the construction of the Hind Tank Replacement Project on Stephens' Property, and/or (3) an occurrence resulting from the District leaving and abandoning the existing pipeline identified in Recital A, above, and/or (4) District's wrongful use of Property A and/or Property B and/or related easements during District's ownership thereof, including but not limited to ingress to and egress from said properties and related easements, subject to Paragraph 4.H above.

To the fullest extent permitted by law, Stephens agrees to indemnify and hold District, its officers, consultants, contractors and employees harmless from and against any and all third party claims, damages, losses and expenses, of whatever kind or nature, including attorneys' fees, arising out of or resulting from (1) Stephens' wrongful use of Stephens' Property, including but not limited to ingress and egress to and from the Stephens' Property subject to Paragraph 4.H., above, (2) an occurrence on Property B during Stephens' ownership, and/or (3) any interference with the District in performance of the work anticipated hereunder, subject to Paragraph 4.H., above.

Such obligations shall not be construed to negate, abridge, or reduce other rights, remedies, or obligations of indemnity, which may exist as to any or all of the indemnitees described herein.

6. **GRANT DEED.** Stephens agrees to transfer Property B to District by grant deed in the form appearing in Exhibit E, attached and incorporated herein as if fully set forth, prior to construction of new water tanks on Property B.
7. **EASEMENT DEED.** Stephens agrees to convey the non-exclusive New Easement to District, which shall include the right to locate a District water line in existing conduit, or otherwise, under the driveway to the newly constructed tanks to be located on Property B, as well as the right of ingress and egress in favor of District for the purpose of maintaining, repairing, operating and replacing District facilities on Property B, by easement deed in the form appearing in Exhibit F, attached and incorporated herein as if fully set forth, prior to construction of the new water tanks on Property B.
8. **QUITCLAIM DEED.** District agrees to quitclaim its rights to Property A, in the form appearing in Exhibit G, attached and incorporated herein as if fully set forth, upon completion of the Project as herein described.

9. **ESCROW.** Within ten (10) days following notice from District that it has completed its due diligence review of Property B and elects to proceed with the land exchange in accordance with this Agreement, pursuant to Paragraph 2, above, District and Stephens shall open an escrow (“Escrow”) to complete the transactions described herein using First American Title Company, Greenbrae, California (“First American”) as escrow agent and deposit the executed documents necessary to complete this transaction. This Agreement shall constitute the joint instructions of the parties hereto and the parties agree to execute general escrow instructions in a form that may be reasonably requested by First American to the extent consistent with this Agreement.

Within ten (10) days of opening Escrow, District shall deposit with First American the fully executed Quitclaim Deed in the form appearing in Exhibit G for the purpose of relinquishing and releasing any all right, title and interest District may have in the Hind Tank Lot and any and all related real property rights, pursuant to the Indenture or otherwise, to Stephens.

Within ten (10) days of opening Escrow, Stephens shall deposit with First American the fully executed Grant Deed in the form set forth in Exhibit E and the fully executed New Easement in the form set forth in Exhibit F.

First American is hereby instructed to record the Grant Deed and New Easement in favor of District within ten (10) business days of receipt of said documents. First American shall record the Quitclaim Deed only on upon notice from both parties that District’s work contemplated and required hereunder has been completed. Upon completion of District’s work, as described herein, the parties will notify First American in writing and First American will (1) record the Quitclaim Deed in favor of Stephens, and (2) release all funds deposited into Escrow to the appropriate parties as provided in this Agreement.

10. **PROCESSING COSTS.** The parties hereto agree that District shall be responsible for, and pay, costs associated with this transaction, including recording fees for both parties. The parties shall each bear the costs of their own title insurance, if any.

11. **TITLE.**

A. District shall take title to Property B and the New Easement as described herein free and clear of all liens and encumbrances, taxes and assessments, penalties and costs, leases (recorded and unrecorded), easements, rights-of-way, bonds, and any and all restrictions and reservations of record.

B. Stephens shall take title to Property A described herein free and clear of all liens and encumbrances, taxes and assessments, penalties and costs, leases (recorded and unrecorded), easements, rights-of-way, bonds, and any and all restrictions and reservations of record.

12. **POSSESSION.** District shall be entitled to take possession of Property B and the New Easement upon recordation of deeds thereto. Stephens shall be entitled to take possession of Property A upon recordation of the quitclaim deed thereto.
13. **NOTICES.** Any notice, request, demand, instruction or other communication to be given to any party hereunder shall be in writing and delivered as follows:

If to District, to: Marin Municipal Water District
 Attn: District General Counsel
 220 Nellen Avenue
 Corte Madera, CA 94925

If to Stephens, to: Charles Stephens
 Stephens Properties, Inc.
 P.O. Box 750007
 Petaluma, CA 94975

Notice shall be delivered personally, including by messenger or courier, or by certified mail, return receipt requested, postage prepaid. Notices shall be deemed to have been duly given (a) if delivered personally, on the date of delivery; (b) if transmitted by certified mail, on the earlier of (i) the second (2nd) business day after the date of such mailing, or (ii) the date of receipt. The addresses and addressees for the purposes of this paragraph may be changed by giving written notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee as stated by written notice, or as provided herein if no written notice or change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

14. **FURTHER ASSURANCES.** District and Stephens agree that at any time or from time to time after the execution of this Agreement, and whether before or after the recordation of deeds, they will, upon request of the other, execute and deliver such further documents and do such further acts and things as such party may reasonably request in order to fulfill the purposes of this Agreement.
15. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.
16. **TIME.** Time is of the essence of this Agreement and failure to comply with this provision shall be a material breach of this Agreement.
17. **HAZARDOUS WASTE.**

A. During the time in which District has owned Property A, neither District nor, to the best of District's knowledge (*without having conducted an inquiry*), any third party

has used, generated, manufactured, produced, stored or disposed of, on, under or about Property A, or transported to or from said property any hazardous materials. District knows of no proceeding or inquiry by any governmental authority or agency in connection with the presence of hazardous materials on said property.

B. During the time in which Stephens has owned the property described in Exhibit C, neither Stephens nor to the best of Stephens knowledge (*without having conducted an inquiry*), any third party has used, generated, manufactured, produced, stored or disposed of, on, under or about the property described in Exhibit C or transported to or from said property any hazardous materials. Stephens knows of no proceeding or inquiry by any governmental authority or agency in connection with the presence of hazardous materials on said property.

18. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. This Agreement was negotiated at arm's length by the parties hereto. The provisions herein shall not be construed in favor of or against any party, but shall be construed as if all parties prepared this Agreement.
19. **EFFECT OF WAIVER OF PROVISION ON REMEDY.** No waiver by a party of any provision of this Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by a party of any remedy provided in this Agreement or at law shall not prevent the exercise by that party of any other remedy provided in this Agreement or at law.
20. **TITLE AND CAPTIONS.** The title of this Agreement and the captions heading the various paragraphs of this Agreement are for convenience and shall not be considered to limit, expand, or define the contents of this Agreement as a whole or the respective paragraphs. Masculine, feminine, or neuter gender and the singular and the plural number, shall each be considered to include the other whenever the context so requires.
21. **NO REPRESENTATION REGARDING LEGAL EFFECT OF DOCUMENT.** No representation, warranty, or recommendation is made by either party, its agents, employees, or attorneys regarding the legal sufficiency, legal effect, or tax consequences of this agreement or the transaction, and each signatory is advised to submit this agreement to his respective attorney before signing it.
22. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which is deemed to be an original, and may be signed in counterparts, but all of which taken together shall constitute one instrument.
23. **ENTIRE AGREEMENT.** This Agreement embodies the entire agreement and understanding between the parties relating to the subject matter hereof and shall not be amended, waived or discharged except by an instrument in writing executed by both

parties. This Agreement supersedes all prior discussions, negotiations, agreements and memoranda whether oral or written.

24. **COMMISSIONS.** Each of the parties hereto represents and warrants that it has not dealt with any salesperson, broker or finder with respect to this transaction. No fees or commissions shall be paid by either party relating to this transaction; any fees or commissions shall be the sole responsibility of each party.
25. **NO MERGER.** The terms and conditions of this Agreement shall survive closing and shall not merge into the deeds.
26. **ATTORNEY'S FEES.** In any action or proceeding connected with the enforcement of this Agreement, the prevailing party shall be entitled to an award of attorney's fees and costs.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed the day and year first above written.

MARIN MUNICIPAL WATER DISTRICT

{Name}, {Title}

Date

APPROVED AS TO FORM:

Molly MacLean, District General Counsel

STEPHENS PROPERTIES, INC.

Charles R. Stephens, President

Date

THE STEPHENS FAMILY 1996 TRUST DATED JANUARY 23, 1996

Charles R. Stephens, Trustee

Date

Sun P. Stephens, Trustee

Date

List of Exhibits:

Exhibit A – 1930 Indenture

Exhibit B – 1985 Quitclaim Deed

Exhibit C – Property B legal description and Plat Map

Exhibit D – ILS Associates, Inc. drawing, Driveway Improvement Plan

Exhibit E – Form of Grant Deed, Property B from Stephens to District

Exhibit F – Form of Easement Deed, New Easement

Exhibit G – Form of Quitclaim Deed, Property A from District to Stephens