

**REPORT TO MAYOR AND COUNCIL**

**TO THE HONORABLE MAYOR AND CITY COUNCIL:**

DATE: July 22, 2014

**SUBJECT: ADOPT RESOLUTION NO. 14-49, APPROVING THE FINAL MAP FOR TRACT 9162, COPPERLEAF SUBDIVISION (ASSESSOR'S PARCEL NO. 113-133-008); AND APPROVE THE SUBDIVISION AGREEMENT**

**Report in Brief**

On March 18, 2009, the Planning Commission approved Rezoning (RZ 08-001), Vesting Tentative Map (TM 08-001), Tree Removal (RT 08-004), and Design Review (DR 08-002) for the Copperleaf Subdivision located at 3319 Walnut Avenue. The subdivision proposes to construct 11 single-family homes and a private road on a 2.5-acre site.

New Copperleaf Holdings, LLC of Concord, has prepared a Final Subdivision Map and Subdivision Improvement Plans for the subdivision. The Final Map and Subdivision Improvement Plans substantially conform to the Vesting Tentative Map titled "Copperleaf Subdivision 9162." New Copperleaf Holdings requests approval of the Final Map before completing all public improvements required by the conditions of approval of the tentative map and wishes to enter into an agreement for the completion of the improvements within two (2) years.

**Background**

On March 18, 2008, the developer submitted an application for Rezoning (RZ 08-001), Vesting Tentative Map (TM 08-001), Tree Removal (RT 08-004), and Design Review (DR 08-002) to develop the proposed subdivision. The proposed subdivision at 3319 Walnut Avenue consists of one 2.5-acre parcel, Assessor's Parcel No. 113-133-008, to be subdivided into an 11-lot, single-family home development with a private road.

On March 18, 2009, at its regularly scheduled public hearing, the Planning Commission approved Rezoning (RZ 08-001), Vesting Tentative Map (TM 08-001), Tree Removal (RT 08-004), and Design Review (DR 08-002) applications with conditions and findings. The Vesting Tentative Map was approved on July 13, 2009. On July 15, 2009, Governor Brown signed Assembly Bill 333 (AB 333) which extended the expiration date of valid tentative maps, scheduled to expire prior to January 1, 2014, by 24 months. On July 15, 2011, Governor Brown signed Assembly Bill 208 (AB208), extending the expiration date of tentative maps for another two years. The Copperleaf Vesting Tentative Map met these criteria and the expiration was extended to July 13, 2015.

**ADOPT RESOLUTION NO. 14-49, APPROVING THE FINAL MAP FOR TRACT 9162,  
COPPERLEAF SUBDIVISION (ASSESSOR'S PARCEL NO. 113-133-008); AND  
APPROVE THE SUBDIVISION AGREEMENT**

July 22, 2014

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**Discussion**

The Final Map is in substantial compliance with the Vesting Tentative Map titled "Copperleaf Subdivision 9162" approved by the Planning Commission, complies with the applicable provisions of the Subdivision Map Act and City Municipal Code, and is technically correct. The Final Map includes an offer of dedication of a public utility easement, public sanitary sewer easement, and public emergency vehicle access easement. The common improvements, including utility service connections, private street, drainage facilities, common areas, street lights, stormwater treatment systems and landscaping, will be maintained by the Homeowners Association as outlined in the Covenant, Conditions and Restrictions (CC&R) for the subdivision.

New Copperleaf Holdings, LLC requests approval of the Final Map before completing the public and other improvements required to serve the subdivision and as outlined in the conditions of approval of the tentative map and wishes to enter into an agreement for the completion within two (2) years. The conditions of approval also require the subdivider to install permanent features that prevent the pollution of stormwater runoff from the project site and enter into an agreement for the operation, maintenance and preservation of the stormwater treatment measures.

**Fiscal Impact**

New Copperleaf Holdings, LLC has paid the fees and charges required for the improvement plan reviews and inspections. The water system improvements constructed to serve the project will be owned and maintained by the Contra Costa Water District. The City will accept the sewer main improvements and curb, gutter, sidewalk within the public right of way on Walnut Avenue upon completion of the subdivision improvements.

**Public Contact**

The City Council agenda was posted.

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**Recommendation for Action**

Staff recommends that the City Council adopt Resolution 14-49, approving the Final Map for Tract 9162, Copperleaf Subdivision (Assessor's Parcel No. 113-133-008); accept the public utility easement, public sanitary sewer easement, and public emergency vehicle access easements offered for dedication and authorize the City Manager to execute the Subdivision Improvement Agreement and Stormwater Maintenance Agreement for the Copperleaf Subdivision, subject to the City Attorney's approval of the Performance Securities submitted by the Subdivider.

Prepared by: Daniel A. Sequeira, PE  
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Reviewed by: Robert Ovadia, PE  
City Engineer  
[robert.ovadia@cityofconcord.org](mailto:robert.ovadia@cityofconcord.org)

Reviewed by: Victoria Walker  
Director of Comm. & Econ. Development  
[victoria.walker@cityofconcord.org](mailto:victoria.walker@cityofconcord.org)



Valerie J. Barone  
City Manager

[valerie.barone@cityofconcord.org](mailto:valerie.barone@cityofconcord.org)

- Attachment 1: Resolution No. 14-49
- Attachment 2: Location Map
- Attachment 3: Subdivision Agreement
- Attachment 4: Stormwater Maintenance Agreement

**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD  
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

**A Resolution Approving the Final Map for  
Tract 9162, Copperleaf Subdivision,  
Assessor’s Parcel No. 113-133-008**

**Resolution No. 14-49**

**WHEREAS**, on March 18, 2009, the City of Concord Planning Commission approved with conditions and findings Rezoning (RZ 08-001), Vesting Tentative Map (TM 08-001), Tree Removal (RT 08-004), and Design Review (DR 08-002); and

**WHEREAS**, the subdivision proposes to subdivide Assessor’s Parcel Number 113-133-008 into an 11-lot, single-family home development; and

**WHEREAS**, the City Engineer has certified that the Final Map conforms to the approved Vesting Tentative Map, and that it is technically correct; and

**WHEREAS**, the developer has complied with all applicable conditions of approval established by the Planning Commission for this Subdivision prior to Final Map approval; and

**WHEREAS**, the developer has signed the Subdivision Agreement, paid the applicable fees, and posted the required securities.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES RESOLVE AS FOLLOWS:**

**Section 1.** Approves the Final Map of Subdivision Tract 9162 and directs the City Clerk, Planning Manager, and City Engineer to sign the Final Map on behalf of the City.

**Section 2.** Approves the Subdivision Agreement and authorizes the City Manager to execute the Subdivision Agreement.

**Section 3.** The City Clerk shall cause a certified copy of this resolution attested to under her seal to be recorded in the Office of the Contra Costa County Recorder.

**Section 4.** This resolution shall be effective immediately upon its passage and adoption.

**PASSED AND ADOPTED** by the City Council of the City of Concord on July 22, 2014, by the following vote:

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- AYES:**
- NOES:**
- ABSTAIN:**
- ABSENT:**

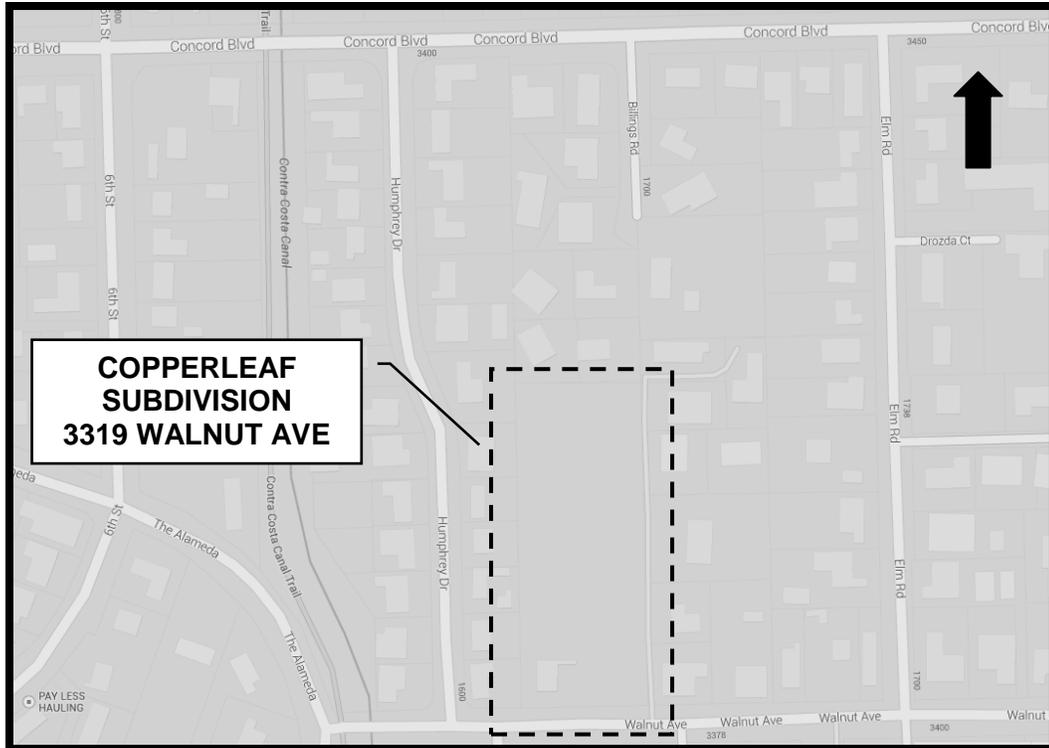
**I HEREBY CERTIFY** that the foregoing Resolution No. 14-49 was duly and regularly adopted at a regular meeting of the City Council of the City of Concord on July 22, 2014.

\_\_\_\_\_  
Mary Rae Lehman, CMC  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Mark S. Coon  
City Attorney

Cc: Office of the Contra Costa County Recorder  
New Copperleaf Holdings, LLC (developer)



**LOCATION MAP**  
No Scale

WHEN RECORDED MAIL TO:

**City Clerk  
City of Concord  
1950 Parkside Drive, MS 03  
Concord, CA 94519-2578**

SPACE ABOVE FOR RECORDER'S USE ONLY

**SUBDIVISION IMPROVEMENT  
AGREEMENT**

SUBDIVISION		NUMBER
NAME <b>Copperleaf</b>		<b>9162</b>
SUBDIVIDER		
NAME <b>New Copperleaf Holdings, LLC</b>		
STREET <b>4021 Port Chicago Hwy</b>	CITY <b>Concord</b>	ZIP <b>94520</b>

THIS SUBDIVISION IMPROVEMENT AGREEMENT ("Agreement") is entered into on \_\_\_\_\_**2014**, BY AND BETWEEN THE CITY OF CONCORD, a general law city in Contra Costa County, California ("City"), and **New Copperleaf Holdings, LLC** ("Subdivider"), who do mutually promise and agree as follows:

- 1. Improvements.** Subdivider shall construct, install, and complete road and street improvements, drainage facilities, sidewalks, curbs, gutters, utilities, street signs, sewer work, fire hydrants, electroliers, monuments, other structures, and any and all grading and improvements incidental to the work to be performed hereunder by reference and made a part hereof, all as required by the Concord Municipal Code, and in accordance with the current edition of the City Standard Specifications and City Standard Plans, both of which are on file in the City Department of Community and Economic Development, 1950 Parkside Drive MS/53, Concord, CA 94619 and are incorporated herein by reference.
- 2. Completion.** Subdivider shall complete the improvements within 12 months from the recording of the final map, unless an extension is granted by the City Council. If the Subdivider fails to complete the improvements within the specified time, the City may, at its option, cause any or all uncompleted improvements to be completed and the parties executing the surety or sureties shall be firmly bound for the payment of all necessary costs to complete the improvements, along with all other costs recoverable by the City pursuant to the Concord Municipal Code and the California Subdivision Map Act (Government

Code, Section 66410 and following). The improvements shall be completed in a good workmanlike manner in accordance with accepted construction practices and in a manner equal or superior to the requirements of the Concord Municipal Code and rulings made thereunder; and where there is a conflict between the improvement plan and the Concord Municipal Code, the stricter requirements shall govern. Time is of the essence in this Agreement.

3. **Guarantee and Warranty.** Subdivider guarantees that the work is and will be free from defects and will perform satisfactorily in accordance with the Concord Municipal Code. Subdivider shall warranty the work for one (1) year after its completion and acceptance against any defective workmanship or materials or any unsatisfactory performance.

4. **Fees.** Upon execution of this Agreement, Subdivider shall, in accordance with the Concord Municipal Code, concurrently pay the following fees:

- a. Construction Inspection Fee (9% x \$152,872)..... **\$13,758.48**
- b. Grading Fee ..... **\$2,152.00**
- Application Processing Fee = (2 hrs x \$172/hr = \$344) plus \$1,118**  
**(Fee for 600 Cubic Yards) plus Erosion Control Monitoring (30**  
**Days x \$23/Day = \$690)**
- c. Local Drainage Fee (project is located in Zone 90, 2.5 Acres x **\$0.00**  
**\$3,414/acre = \$8,535 to be paid at Cert. of Occupancy per COA**  
**114).....**
- d. Parkland Fee (10 Units at \$16,691 = \$166,910 to be paid at Cert. of  
**Occupancy per COA 115)..... \$0.00**
- e. Improvement Plan Review and Filing Fee (\$13,244 + \$1,720)..... **\$14,964.00**
- f. Final Map Review (\$2,752 + (11 Lots x \$172/Lot = 1,892) = \$4,644)..... **\$4,644.00**
- g. Additional Plan Review Fee:  
hours @ per hour ..... **\$0.00**

<b>h. Other: .....</b>	<b>\$24,633.00</b>
<b>Acceptance of Improvements and Dedication Fee (\$3,440)</b>	
<b>Archiving Documents (\$1,000)</b>	
<b>Condition Compliance (\$5,000)</b>	
<b>Document Scanning ((9 Sheets x \$3.50/Sheet) + (1 Sheet x \$1.50/Sheet = \$33.00) )</b>	
<b>Encroachment Permit Filing Fee (\$86)</b>	
<b>Encroachment Permit Application Processing Fee (\$344)</b>	
<b>Erosion Control Security (\$5,000)</b>	
<b>New Lot Creation (11 Lots x \$344/Lots = \$3,784)</b>	
<b>Pad Certification (11 Pads x \$86/Pad = \$946)</b>	
<b>Restoration Security (\$5,000)</b>	
<b>Subtotal</b>	<b>\$24,633.00</b>
<b>Less Amount Previously Paid</b>	<b>\$0.00</b>
<b>Total</b>	<b>\$24,633.00</b>

5. **Additional Fees.** All additional fees required by the Concord Municipal Code shall be paid to the City prior to the issuance of a Certificate of Occupancy for each dwelling unit within the subdivision.

6. **Improvement Security.** Any improvement agreement, contract or act required or authorized by the Subdivision Map Act or Concord Municipal Code Title 17 for which security is required, shall be secured in accordance with Section 66499 et seq. of the Subdivision Map Act and as provided in Concord Municipal Code Section 17.35.070, incorporated herein by reference. A performance bond or security in the amount of 100 percent of the estimated improvement cost to guarantee the construction or installation of all improvements shall be required. An additional amount of 100 percent of the estimated improvement cost shall be required to guarantee the payment to the Subdivider’s contractor and subcontractors, and to persons furnishing labor, materials or equipment for the construction or installation of improvements. Improvement costs shall be estimated in accordance with CMC Section 17.35.070(e).

A. **Bonds.** Upon execution of the Agreement, Subdivider shall deposit the following security with City:

1. **Faithful Performance.** The security shall consist of the following:
  - a. A cash deposit, or certified or cashier's check, or an acceptable corporate surety bond for at least **\$167,079.60**; and
  - b. The **\$13,758.48** construction inspection fee paid under Subsection 4.a above which shall become a part of the security in the event Subdivider fails to meet his/her obligation prescribed under this Agreement.

The above Faithful Performance security totals **\$180,838.08**.

2. **Labor and Materials.** Security for at least **\$167,079.60**, which is the total estimated cost of the work, security payment to the contractor, to his subcontractor, and to persons renting equipment or furnishing labor or materials to them or to the Subdivider.
  - a. **Warranty Security.** Upon acceptance of the subdivision improvements by the City, the Subdivider shall provide security in the amount required by the City Engineer to guarantee the improvements throughout the warranty period of one year following completion and acceptance of the improvements. The amount of the warranty security shall be not less than 15 percent of the cost of the construction of the improvements., including the cash bond, which shall be retained for the one-year warranty period. The form of warranty security provided by Subdivider shall comply with CMC Section 17.35.070(c).
  - b. **Release.** Release of any improvement security shall be in accordance with Concord Municipal Code Section 17.35.070(f).
7. **Inspector.** A City inspector shall be present on the job site, and said inspector shall be such as the City shall designate and appoint.
8. **Warranty.** Subdivider represents and warrants that said improvement plan is adequate to accomplish this work as promised in Section 1. If at any time before the City's formal, final acceptance of the subdivision improvements the City Engineer reasonably determines that either the improvements and/or the improvement plan contain defects, failures, errors, or does not comply with applicable laws and statutes, Subdivider shall make changes necessary to address these deficiencies. upon formal final

acceptance of the public improvements by the City, ownership of the public improvements constructed pursuant to this Agreement shall vest in City.

- 9. No Waiver by City.** Inspection of work and/or materials, or approval of work and/or materials inspected, or statement by any officer, agent, or employee of the City indicating the work, or any part thereof, complies with the requirements of this Agreement, or acceptance of the whole or any part of said work and/or materials, or payments thereof, or any combination, or all of these acts shall not relieve Subdivider of his/her obligation to fulfill this contract as prescribed; nor shall the City be thereby estopped from bringing any action for damages arising from the failure to comply with any of the terms and conditions hereof.
- 10. Indemnity.** Pursuant to Concord Municipal Code Section 17.35.050(g), to the extent permitted by applicable law, and except to the extent caused by the City's sole or active negligence or willful misconduct, Subdivider shall hold harmless and indemnify and defend the indemnitees from the liabilities as defined in this section. This indemnification provision shall survive final formal acceptance of any improvements.
- A. The indemnitees** benefited and protected by this promise are the City and its elective and appointive boards, commissions, officers, agents, and employees;
- B. The liabilities** protected against are any liability of claim for damage of any kind actually or allegedly suffered, incurred, or threatened because of actions defined below, and including personal injury, death, property damage, inverse condemnation, or any combination of these, and regardless of whether or not such liability, claim, or damage was unforeseeable at any time before City approved the improvement plan or accepted the improvements as completed, and including the defense of any suit(s), action(s), or other proceeding(s) concerning these;
- C. The actions causing liability** are any act or omission (negligent or non-negligent) in connection with the matters covered by this Agreement and attributable to Subdivider, contractor, subcontractor, or any officer, agent, or employee of one (1) or more of them, any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties, and expenses (including reasonable attorneys' fees and costs) arising out of or in any way connected with the improvements or Subdivider's performance or failure to perform under this Agreement. The

indemnification in this section is not conditioned or dependent on whether or not any indemnitee has prepared, supplied, or approved any plan(s) or specification(s) in connection with this work or subdivision, or has insurance or other indemnification covering any of these matters.

- 11. Insurance.** Subdivider shall, at its own expense, procure and maintain in full force at all times during the term of this Agreement the following insurance:
- A. Commercial General Liability Coverage.** Subdivider shall maintain commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal injury, and property damage.
  - B. Automobile Liability Coverage.** Subdivider shall maintain automobile liability insurance covering all vehicles used in the performance of this Agreement providing a one million dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.
  - C. Compliance with State Workers' Compensation Requirements.** Subdivider covenants that it will insure itself against liability for Workers' Compensation pursuant to the provisions of California Labor Code §3700, et seq. Subdivider shall, at all times, upon demand of the City, furnish proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by Subdivider for City. This provision shall not apply upon written verification by Subdivider that Subdivider has no employees.
  - D. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain the following provisions:
    - 1. Additional Insured.** City, its officers, agents, employees, and volunteers are to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf of Subdivider and operations of Subdivider, premises owned, occupied, or used by Subdivider. The coverage shall contain no special limitations on the scope or protection afforded to City, its officers, officials, employees, or volunteers. Except for

worker's compensation and professional liability insurance, the policies mentioned in this subsection shall name City as an additional insured and provide for notice of cancellation to City. Subdivider shall also provide timely and prompt notice to City if Subdivider receives any notice of cancellation or nonrenewal from its insurer.

2. **Primary Coverage.** Subdivider's insurance coverage shall be primary insurance with respect to City, its officers, officials, employees, and volunteers. Any insurance, risk pooling arrangement, or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be in excess of Subdivider's insurance and shall not contribute with it.
3. **Reporting Provisions.** Any failure to comply with the reporting provisions of the policy shall not affect the coverage provided to the City, its officers, officials, employees, or volunteers.
4. **Verification of Coverage.** Subdivider shall furnish City with certificates of insurance and the original endorsements effecting coverage required by this Agreement. 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. The aforementioned policies shall be issued by an insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to City at the time of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form approved by the City Attorney. City reserves the right to require complete certified copies of all required insurance policies at any time.

12. **Compliance with Laws; Encroachment Permits; Costs.** Subdivider shall carry out the work of public improvements described in Section 1 in conformity with all applicable laws, including without limitation, all applicable state labor laws and standards; any applicable Public Contract Code requirements; City development standards; applicable building, plumbing, mechanical and electrical codes; all other provisions of the Concord Municipal Code; and all applicable disabled and handicapped access requirements, including without limitation, the American with Disabilities Act, 42 U.S.C. 12101, et seq., Government Code 4450, et seq., Government Code section 11135 et seq. and the Unruh Civil

Rights Act, Civil Code section 51 et seq. Nothing herein shall prevent Subdivider from contesting, in good faith, by proper proceedings, the validity or applicability of any such applicable laws. Subdivider shall obtain, at its sole cost and expense, any encroachment permits and other permits required by City or other governmental agencies in order to perform the work of improvements. Subdivider shall pay, when due, all the costs of the work, including inspections thereof and relocating existing utilities required thereby.

- 13. Non-performance and Costs.** If Subdivider fails to complete the improvements within the time specified in this Agreement or extensions granted, City may proceed to complete them by contract or otherwise, and Subdivider shall pay the costs and charges therefor immediately upon demand. The actions described in this section are in addition to, and not in lieu of, any and all legal remedies as provided by law or equity, or otherwise available to City as a result of Subdivider's failure to construct the improvements or to satisfy any obligations or duties owed to City hereunder,
- 14. Heirs, Successors and Assigns.** This Agreement shall be binding upon the heirs, successors, and assigns of the parties hereto. Subdivider may not assign this Agreement unless City consents in writing, which consent shall not be unreasonably withheld, conditioned, or delayed.
- 15. Runs with Land and Recordation.** This Agreement shall run with the land. The City shall cause this agreement to be recorded with the Contra Costa County Recorder, and a copy will be provided to the Subdivider. The covenants and agreements contained herein shall be deemed to be covenants running with the land for the benefit of City, as well as affected streets, storm drains, waterways, bodies of water, each and every part thereof, and the successors and assigns in ownership of all or any part of the foregoing. Subdivider agrees for itself and its successors and assigns, that in the event a court of competent jurisdiction determines that the covenants in this Agreement do not run with the land, such covenants shall be recorded as equitable servitudes against the property and the project in favor of City.
- 16. Governing Law, Interpretation; Severability.** This Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. Any action at law or in equity brought by any of the parties for the purpose of enforcing a right or rights provided for herein shall be held exclusively in a state court in Contra Costa County, California, and the parties waive all provisions of law providing for a change of

venue in these proceedings to any other county. Headings are for convenience only. The words “include” and “including” shall be interpreted as though followed by the words “without limitation.” This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted. Waiver by either party of any breach of any term, covenant, or condition contained in this Agreement, or any default in their performance of any obligations under this Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same. The provisions of this Agreement shall be severable and if any phrase, clause, section, subsection, paragraph, subdivision, sentence or provision is adjudged invalid or unconstitutional by a court of competent jurisdiction, or the applicability to any party is held invalid, this shall not affect or invalidate the remainder of any phrase, clause, section, subsection, paragraph, subdivision, sentence, or provision of this Agreement. This Agreement and the approved improvements plans referred to herein contain the entire agreement between Subdivider and City with respect to the improvements. No modification to this Agreement shall be effective unless it is in writing signed by the parties and approved as to form by the City Attorney.

- 17. Independent Contractor.** The parties understand and acknowledge that Subdivider, its agents, employees, consultants, subconsultants, experts, contractors, and subcontractors are and shall at all times remain wholly independent contractors as to the City. Neither the City nor any of its officers or employees shall have any control over the manner by which the Subdivider performs this Agreement and shall only dictate the results of the performance. Subdivider shall not represent that Subdivider or its agents, employees, consultants, subconsultants, experts, contractors, or subcontractors are agents or employees of the City, and Subdivider shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent, and shall have no authority, express or implied, to bind the City to any obligation whatsoever, unless otherwise provided in this Agreement.

18. **Recordation.** This Agreement shall be recorded with the County Recorder of Contra Costa County.

New Copperleaf Holdings, LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Owner/Manager

CITY OF CONCORD, a municipal corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Valerie Barone, City Manager

**ACKNOWLEDGEMENT**

STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA

On \_\_\_\_\_ before me, \_\_\_\_\_ personally appeared \_\_\_\_\_ of \_\_\_\_\_ the who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

SUBDIVIDER:

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Name  
Signer's Capacity

**NOTE TO DEVELOPER:** (1) Execute acknowledgement form below; and (2) if a corporation attach a certified copy of (a) the Bylaws or (b) the resolution of the Board of Directors authorizing execution of this contract and of the bonds required hereby, together with appropriate corporate acknowledgment form—corporate seal must be affixed.

**ACKNOWLEDGEMENT**

STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA

On \_\_\_\_\_ before me, \_\_\_\_\_,  
personally appeared

\_\_\_\_\_ of the \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

NOTARY PUBLIC, STATE OF CALIFORNIA

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

City Clerk  
City of Concord  
1950 Parkside Drive MS/01  
Concord, CA 94519

(Space Above This Line for Recorder's Use Only)  
[Exempt from recording fee per Gov. Code § 27383]

APN(s): \_\_\_\_\_

**STORMWATER TREATMENT SYSTEMS  
OPERATION AND MAINTENANCE AGREEMENT**  
[Project: \_\_\_\_\_ **Insert Project Name and Address**]

THIS STORMWATER TREATMENT SYSTEMS OPERATION AND MAINTENANCE AGREEMENT (“**Agreement**”) is made and entered into \_\_\_\_\_, 20\_\_ (“**Effective Date**”), by and between the City of Concord (“**City**”) and \_\_\_\_\_, a \_\_\_\_\_ (“**Property Owner**”). Section 12, below, addresses additional persons and entities included in the defined term “Property Owner”, and joint and several liability.

**RECITALS**

- A. Property Owner is the owner of real property commonly known as \_\_\_\_\_, Concord, CA, 94\_\_, APN(s) \_\_\_\_\_ (“**Property**”), as more particularly described in the attached Exhibit A.
- B. City is subject to the Contra Costa Countywide NPDES Municipal Stormwater Permit No. CAS0029912 issued by Order No. 99-58 on July 21, 1999, amended by Order No. R2-2003-0022 on February 9, 2003, amended by Order Nos. R2-2004-059 and R2-2004-0061 on July 21, 2004, and amended by Order No. R2-2006-0050 on July 12, 2006, and any amendments thereto or re-issuances thereof (“**NPDES Permit**”).
- C. Provision C.3. of the NPDES Permit requires the permittee public agencies to provide minimum verification and access assurances that all stormwater treatment systems be adequately operated and maintained by persons and entities responsible therefor. The stormwater treatment systems that must be installed, constructed, and maintained on or about the Property (“**Stormwater Treatment Systems**”) are more particularly described on the legible reduced-scale copy of the improvement plans attached hereto as Exhibit B (“**Improvement Plans**”; full-scale plans and any amendments thereto are on file with City’s Engineering Division). The defined term “**Stormwater Treatment Systems**” includes all pipes, channels or other conveyances built to convey stormwater to the Stormwater Treatment Systems, as well as all structures, improvements, basins, bioretention facilities, special soil, and vegetation provided to control the quantity and quality of the stormwater, all as set forth in the Plans.
- D. City is the permittee public agency with jurisdiction over the Property.

E. The NPDES Permit, City's Stormwater Management and Discharge Control Ordinance (Concord Municipal Code Sections 86-31 through 86-70, inclusive), stormwater related guidelines, criteria and other written directions, and any amendments thereto (collectively, "**Stormwater Regulations**"), development conditions of approval, and the health, safety and welfare of the citizens of Concord, require that the Stormwater Treatment Systems be properly constructed, and adequately operated, and maintained on the Property by the Property Owner.

F. City has approved the Stormwater Control Operation and Maintenance Plan prepared by \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_ ("**O&M Manual**", attached as Exhibit C). The O&M Manual includes a detailed description of and schedule for long-term maintenance activities of the Stormwater Treatment Systems. The O&M Manual may be subsequently modified from time to time, subject to City's prior written approval.

G. This Agreement memorializes Property Owner's maintenance, operations, and inspection obligations with respect to the Stormwater Treatment Systems.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. Construction. The Stormwater Treatment Systems shall be constructed by Property Owner in strict accordance with the approved plans and specifications identified for the Property and any other requirements thereto which have been approved by City in conformance with Stormwater Regulations. Among other things, the Stormwater Treatment Systems shall accept, treat, and convey public and private stormwater runoff. Property Owner will make available copies of the City-approved Improvement Plans, O&M Manual, and any amendments thereto (collectively, "**Plans**") at the Property and with the facility or property manager (if any), and must maintain the Stormwater Treatment Systems in good working condition acceptable to City for the life of the project in compliance with the Stormwater Regulations and the Plans.

2. Inspection and Annual Report. Property Owner is required to form a homeowners association or equivalent ("**Association**"). Once the Association is legally formed, references in this Section 2 to "Property Owner" shall mean the Association. Property Owner shall have a qualified inspector conduct a minimum of one (1) annual inspection of the Stormwater Treatment Systems before the wet season, between August 1<sup>st</sup> and October 1<sup>st</sup> each year. City shall notify Property Owner if more frequent inspections are required. The results of each inspection shall be recorded on an "**Inspection and Maintenance Checklist**" (form attached as Exhibit D). Attached as Exhibit E is a form Annual Operation and Maintenance Inspection Report ("**Annual Report**"), which Property Owner shall complete annually in order to verify that inspection and maintenance of the applicable Stormwater Treatment Systems have been conducted pursuant to this Agreement. The Annual Report shall include all completed Inspection and Maintenance Checklists for the reporting period and a record of the volume of all accumulated sediment removed as a result of the Stormwater Treatment Systems. The Annual Report shall be submitted no later than December 31 of each year, under penalty of perjury, to the City at the address in Section 13, below, or to another member of City staff if and as directed by

City in writing.

3. Responsibility. As further set forth in the project's conditions, covenants and restrictions ("CC&Rs"), regardless of whether Association delegates operation, maintenance, and repair of on-Lot (as that term is defined in the CC&Rs) components of Stormwater Treatment Systems to Owner(s) (as that term is defined in the CC&Rs), Association bears primary responsibility for the maintenance, repair, replacement and operation of any and all Stormwater Treatment Systems, whether located in the Common Area or on any Lot(s) (as those terms are defined in the CC&Rs), and associated inspection and reporting. Until such time as the Association is legally formed and the CC&Rs are recorded, Property Owner shall fully bear such responsibilities. This Agreement shall serve as the signed statement by Property Owner accepting responsibility for operation and maintenance of Stormwater Treatment Systems as set forth in this Agreement until the responsibility is legally transferred to another person or entity. Before all or any responsibilities under this Agreement are transferred to another person or entity, and before all or portion of the Property is legally transferred to another person or entity, Property Owner shall provide to City at one or more of the following (as determined by City):

a. Written conditions in the sales or lease agreement requiring the buyer or lessee to assume responsibility for O&M (defined below) consistent with this provision, which conditions, in the case of purchase and sale agreements, shall be written to survive beyond the close of escrow; and/or

b. In the case of a transfer to any Association, Property Owner must provide City with written text in the CC&Rs assigning O&M responsibilities to the Association; and/or

c. Any other legally enforceable agreement or mechanism that assigns responsibility for the O&M.

Any and all such text, conditions, and agreements shall be subject to the approval of the City Engineer and the City Attorney.

4. Maintenance. Property Owner shall not destroy or remove the Stormwater Treatment Systems from the Property nor modify them in a manner that lessens their effectiveness. Property Owner shall, at its sole cost expense, adequately maintain the Stormwater Treatment Systems in good working order acceptable to City and in accordance with the Plans and the Stormwater Regulations. This includes all pipes, channels or other conveyances built to convey stormwater to the Stormwater Treatment Systems, as well as all structures, improvements, basins, bioretention facilities, special soil, and vegetation provided to control the quantity and quality of the stormwater, all as set forth in the Plans. "O&M" means properly and adequately operating and maintaining the Stormwater Treatment Systems in good working condition so that they continue to operate as intended, designed and approved, including in accordance with Plans and the Stormwater Regulations.

5. Sediment Management. Sediment accumulation resulting from the normal operation of the Stormwater Treatment Systems will be managed appropriately by Property Owner. Property Owner will provide for the removal and disposal of accumulated sediments, trash, and debris. Disposal of

accumulated sediments shall not occur on the Property unless provided for in the O&M Manual. Any disposal or removal of accumulated sediments, trash, or debris shall be in compliance with all federal, state and local law and regulations and any amendments thereto.

6. Necessary Changes and Modifications. In order to ensure that the Stormwater Treatment Systems are adequately maintained and continue to operate as intended, designed and approved, Property Owner, at its sole cost and expense, shall make changes or modifications to the Stormwater Treatment Systems and/or O&M Manual as City determines reasonably necessary.

7. Access to the Property. Property Owner hereby grants permission to the Central Contra Costa Sanitary District, County Environmental Health Department, the San Francisco Bay Regional Water Quality Control Board, the Contra Costa County Mosquito and Vector Control District, the City, and each of their respective officers, officials, volunteers, agents, employees successors, and assigns (each, an “**Inspecting Entity**” and collectively “**Inspecting Entities**”) to enter upon the Property at reasonable times and in a reasonable manner to inspect, assess, or observe the Stormwater Treatment Systems and the Property in order to ensure that the Stormwater Treatment Systems are being adequately maintained and are continuing to perform in an adequate manner to protect water quality and the public health and safety. This includes the right to (a) inspect and copy records related to stormwater compliance, and to collect samples and take measurements, and (b) enter upon the Property whenever there is a reasonable basis to believe that a violation of this Agreement or Stormwater Regulations, is occurring, has occurred, or threatens to occur. Each Inspecting Entity also has a right to enter the Property when necessary for abatement of a public nuisance or correction of a violation of any Stormwater Regulations. The applicable Inspecting Entity/ies shall provide forty-eight (48) hours advance written notice to Property Owner; provided, however that advance notice will not be necessary if emergency conditions require immediate remedial action.

8. Failure to Install, Operate, and/or Maintain. In the event Property Owner fails to install, operate and/or maintain the Stormwater Treatment Systems in good working order acceptable to City and in accordance with this Agreement, the Plans and the Stormwater Regulations, City, and its authorized agents and employees may (but are not obligated to) enter the Property and take whatever steps it deems necessary and appropriate to return the Stormwater Treatment Systems to good working order. Such work shall be at Property Owner’s sole cost and expense as set forth in Section 9, below. City will provide reasonable (as may be appropriate for the particular circumstances) advance oral notice to Property Owner; provided, however that advance notice will not be necessary if emergency conditions require immediate remedial action. This provision shall not be construed to allow City to erect any structure of a permanent nature on the Property. It is expressly understood and agreed that City is under no obligation to maintain or repair the Stormwater Treatment Systems and in no event shall this Agreement be construed to impose any such obligation on City. City may require Property Owner to provide a performance bond, security, or other financial assurance providing for the maintenance of the Stormwater Treatment Systems.

9. Reimbursement and Payment of Costs. In the event City performs work of any nature (direct or indirect), including work under Section 8, above, any inspections/re-inspections, or other actions City deems necessary or appropriate to return the Stormwater Treatment Systems

to good working order, or incurs any direct or indirect costs or expends any funds in or related thereto (including the performance of said work for labor, use of equipment, supplies, materials, and the like); or any penalties, fees, fines, and other monetary and non-monetary penalties, reparations, or mitigations arising out of or related to Property Owner's failure to inspect and maintain and submit reports for the Stormwater Treatment Systems, are imposed on or assessed against City (the foregoing are collectively referred to herein as "**Costs**"), Property Owner shall reimburse City for such Costs within thirty (30) days of receipt of City's written demand, and/or shall forfeit any required bond upon demand. If the Costs are not paid within the prescribed time period, City may assess Property Owner for the Costs and applicable penalties. Said assessment shall be a lien against the Property or may be placed on the property tax bill and collected at the same time and in the same manner as ordinary municipal taxes are collected as provided in Government Code Section 38773.5. The actions described in this Section 9 are in addition to, and not in lieu of, any and all legal remedies as provided in the CC&Rs, by law or equity, or otherwise available to City as a result of failure to maintain the Stormwater Treatment Systems.

10. Indemnification. Property Owner shall indemnify, hold harmless, and defend each of the Inspecting Entities from and against any and all claims, demands, suits, damages, liabilities, losses, accidents, casualties, occurrences, judgments, costs, payments, and fees (including attorney fees), personal injury, death, or property damage, claimed or which might arise or be asserted against any Inspecting Entity that are alleged or proven to result or arise from the (a) entry onto the Property by any Inspecting Entity under this Agreement, or (b) the Stormwater Treatment Systems (including construction, presence, existence, non-existence, operation, non-operation, repair, disrepair, maintenance, lack of maintenance, inspection, or failure to inspect, whether by Property Owner, any Inspecting Entity, or any third party). Each of the foregoing is referred to herein as a "**Claim**". In the event a Claim is asserted against City, City will promptly notify Property Owner and Property Owner shall defend at its own expense any suit based on such Claim. If any Claim against any Inspecting Entity shall be allowed, Property Owner shall pay for all costs and expenses in connection herewith. Property Owner's indemnification obligation as to a particular Inspecting Entity shall not apply to any Claim arising from the sole or active negligence or willful misconduct of the Inspecting Entity against whom that Claim is asserted.

11. No Additional Liability. It is the intent of this Agreement to insure the O&M by Property Owner; provided, however, that this Agreement shall not be deemed to create any additional liability not otherwise provided by law for damage alleged to result from or caused by stormwater runoff.

12. Joint and Several Liability; Transfer of Property. This Agreement runs with the land and applies to and shall bind and be obligatory to all present and subsequent owners of the Property or any portion thereof, including any Associations, homeowners, Property Owner's administrators, co-owners, executors, successors, heirs, assigns, and any other persons or entities. Each such person or entity is and shall be included in the defined term "**Property Owner**" and is and shall be jointly and severally liable under this Agreement. Upon transfer of the Property or any portion thereof, Property Owner shall provide the new owner(s) with a copy this Agreement and the then-current Plans, and shall promptly notify City in writing of the transfer and name(s) of the new owner(s) and the address(es) to be used for notices hereunder (see Section 13). Before all or any responsibilities under this Agreement all or portion of the Property is/are legally transferred to the Association, Property Owner shall provide the Association with a copy this Agreement

and the then-current Plans, and shall promptly notify City in writing of the transfer and name(s) of the new Association, and the address to be used for notices hereunder (see Section 13). Nothing in this Agreement is intended or shall be construed to allow any responsibilities under this Agreement to be transferred separate and apart from the Property or portion(s) thereof.

13. Notices. Except as otherwise stated, all notices given under this Agreement must be in writing. Such notices shall be addressed to City at the address indicated below, and to Property Owner at the Property address indicated in Recital A above (with a courtesy copy to the Association address, if any, indicated below). Concord Municipal Code Sections 1-17 through 1-19, inclusive, and any amendments thereto, shall apply to notices under this Agreement.

<u>City:</u>	<u>Association:</u>
City of Concord	_____
Attention: City Engineer	_____
1950 Parkside Drive, MS/40	_____
Concord, CA 94519	_____
Telephone: (925) 671-3470	Telephone: _____

14. Choice of Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. Any action at law or in equity brought by any of the parties for the purpose of enforcing a right or rights provided for by this Agreement shall be held exclusively in a state court in Contra Costa County, California, and the parties waive all provisions of law providing for a change of venue in these proceedings to any other county. Property Owner shall comply with all applicable federal, state, and local laws, rules, and regulations, and any amendments thereto, and shall obtain all applicable licenses and permits.

15. Interpretation. Headings are for convenience only. The recitals and any exhibits attached to this Agreement are incorporated by reference as though fully restated herein. The words “include” and “including” shall be interpreted as though followed by the words “without limitation.” This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted. Waiver by either party of any breach of any term, covenant, or condition contained in this Agreement, or any default in their performance of any obligations under this Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

16. Severability. The provisions of this Agreement shall be severable and if any phrase, clause, section, subsection, paragraph, subdivision, sentence or provision is adjudged invalid or unconstitutional by a court of competent jurisdiction, or the applicability to any party is held invalid, this shall not affect or invalidate the remainder of any phrase, clause, section, subsection, paragraph, subdivision, sentence, or provision of this Agreement.

17. Covenant Running with the Land. This Agreement shall be recorded by City in the Contra Costa County Recorder’s Office at Property Owner’s expense. The covenants and agreements contained herein shall be deemed to be covenants running with the Property for the benefit of City,

as well as affected streets, storm drains, waterways, bodies of water, each and every part thereof, and the successors and assigns in ownership of all or any part of the foregoing. Property Owner agrees for itself and its successors and assigns, that in the event a court of competent jurisdiction determines that the covenants in this Agreement do not run with the Property such covenants shall be recorded as equitable servitudes against the Property and the project in favor of City.

18. Legal Advice; Authority. Property Owner represents and warrants to City that: (a) Property Owner has carefully read this Agreement, and in signing this Agreement, does so with full knowledge of any right which Property Owner may have; (b) Property Owner has received independent legal advice from its legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and (c) Property Owner has freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of City or any City Party except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise. Each individual or entity executing this Agreement on behalf of Property Owner represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of Property Owner and that such execution is binding upon Property Owner.

19. Effective Date and Modification. This Agreement is effective as of the Effective Date. This Agreement shall not be modified except by written instrument executed by City and the then-current Property Owner. Modifications shall be effective upon the date of execution and shall be recorded against the Property.

*[signatures follow on next page]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**PROPERTY OWNER:**

\_\_\_\_\_,  
a \_\_\_\_\_

By:

\_\_\_\_\_  
*[signature must be notarized]*

Name:

Its:

\_\_\_\_\_  
\_\_\_\_\_

By:

\_\_\_\_\_  
*[signature must be notarized]*

Name:

Its:

\_\_\_\_\_  
\_\_\_\_\_

**CITY:**

CITY OF CONCORD, a California municipal corporation

By:

\_\_\_\_\_  
Valerie J. Barone, City Manager  
*[signature must be notarized]*

ATTEST:

By: \_\_\_\_\_  
Mary Rae Lehman, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Mark S. Coon, City Attorney

Exhibit List

- Exhibit A – Legal Description of Property
- Exhibit B – Improvement Plans
- Exhibit C -- O&M Manual
- Exhibit D – [Form] Checklist
- Exhibit E – [Form] Annual Report